



OKLAHOMA DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

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TITLE 450

Chapter 1. Administration

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Official copies of administrative rules can be obtained only from the Office of Administrative Rules, Secretary of State. The official rules are the text accepted by the Oklahoma Secretary of State for publication in the Oklahoma Register and the Oklahoma Administrative Code as required by 75 O.S. § 250 et seq. ODMHSAS has attempted to insure the text within this publication is the same as that on file with the Secretary of State. Any differences will be

decided in favor of the text on file with the Secretary of State. This publication includes permanent rules in effect July 1, 2003.

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SUBCHAPTER 1. GENERAL INFORMATION

450:1-1-1. Purpose

- (a) These rules are promulgated pursuant to the requirements of the Administrative Procedures Act, 75 O.S. § 250, et seq. The purpose of these rules is to effectively implement and enforce the provisions of Title 43A of the Oklahoma Statutes. These rules supplement existing state and federal laws, and being duly promulgated, have the force and effect of law.
- (b) These rules govern formal proceedings of the Department. Informal proceedings may be held as announced by the Department or as agreed with any person.

450:1-1-1.1. Definitions

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

"Administrative Hearing Officer" means an individual who is an attorney licensed to practice law in the State of Oklahoma and is appointed by the Commissioner of ODMHSAS to preside over and issue a proposed order in individual proceedings.

"AOA" means American Osteopathic Association.

"Board" means the Oklahoma State Board of Mental Health and Substance Abuse Services.

"CARF" means Commission on Accreditation of Rehabilitation Facilities (CARF).

"Certification" means a status which is granted to a person or an entity by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS, and indicates approval to provide a particular service. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Certified facility" means any facility which has received a certification status by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS.

"Certification report" means a written notice of the deficiencies developed by ODMHSAS Provider Certification.

"Contractor" or **"contractors"** means any person or entity under contract with ODMHSAS for the provision of goods, products or services.

"DSM" means the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Entities" or **"entity"** means sole proprietorships, partnerships and corporations.

"Facilities" or **"facility"** means entities as described in 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, domestic violence shelters and programs, sexual assault programs, treatment programs for batterers and programs for assertive community treatment.

"Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.

"JCAHO" means Joint Commission on Accreditation of Healthcare Organizations.

"Levels of performance" or **"level of performance"** means units of service by types of service.

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

"**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.

"**Reimbursement rates**" means the rates at which all contractors are reimbursed (paid) for services they provide under their ODMHSAS contract, and which are reported to ODMHSAS on the Integrated Client Information System ("ICIS").

"**Respondent**" means the person(s) or entity(ies) named in a petition for an individual proceeding against whom relief is sought.

"**Site Review Protocol**" means an ODMHSAS internal document used by ODMHSAS staff as a work document in the certification site visit(s) that is based primarily upon the rules (standards/criteria) being reviewed. The Site Review Protocol is used in preparing the Certification Report, which is provided to the facility, and in preparing recommendations regarding certification to the Board for its consideration and action.

"**Units**" or "**unit**" means an hour, or part of an hour, or group of hours, or a 24 hour day during which a specific service is rendered.

450:1-1-2. Applicability

This, and all subsequent chapters are applicable, unless otherwise specifically noted in a chapter, subchapter, part or section of Oklahoma Administrative Code Title 450, to the Oklahoma Department of Mental Health and Substance Abuse Services, the State Board of Mental Health and Substance Abuse Services, and:

- (1) all employees and institutions and facilities of ODMHSAS (43A O.S. §§ 3-101 and 3-107); and
- (2) all facilities (43A O.S. §§ 1-103(7), 3-306.1, 3-314.1, 3-315, 3-319 and 3-415) under contract with ODMHSAS; and
- (3) all facilities subject to certification by ODMHSAS (43A O.S. §§ 3-306.1, 3-314.1, 3-315, 3-317, 3-319, 3-415, 3-416); and
- (4) institutions, organizations and individuals subject to certification by ODMHSAS to provide alcohol drug substance abuse courses (43A O.S. §§ 3-451 through 3-453); and
- (5) agencies and individuals subject to certification by ODMHSAS to provide alcohol and drug assessment and evaluation programs related to driver's license revocation [47 O.S. §§ 11-902(G) and 6-212.2; 43A O.S. § 3-460]; and
- (6) individuals subject to certification to be a behavioral health case manager pursuant to 43A O.S. § 3-318.

450:1-1-3. Compliance with laws and rules

(a) Any statute of the United States, or of the State of Oklahoma now existing, or duly enacted in the future, shall supersede any conflicting provision of the rules of this and all subsequent chapters to the extent of such conflict, but shall not affect the remaining provisions therein.

(b) All persons and organizations affected by the rules of this and all subsequent chapters and related laws shall be knowledgeable of the conduct pertinent in operating in accordance

with all such rules and laws.

450:1-1-4. Organization

- (a) The Board is the entity vested with authority to make rules for the implementation of the Department's statutorily mandated and permissible functions under 43A O.S. §§ 1-101, et seq.
- (b) The Board shall appoint the Commissioner, who is the chief executive officer of the Department with duties, privileges and responsibilities set forth in 43A O.S. § 2-202. The Commissioner shall maintain such staff as authorized by law and assign said staff to carry out the duties and responsibilities required to fulfill the statutory requirements of 43A O.S. §§1-101 et seq., and the rules and directives of the Board.
- (c) The Department shall be organized and divided into such areas and departments as the Board and the Commissioner deem desirable for efficiency. Copies of organizational charts are available upon request from the Human Resources Management Division.

450:1-1-5. Objectives

The objectives of the ODMHSAS are as follows:

- (1) The provision of quality mental health, substance abuse and domestic violence and sexual assault services, within the resources available, to those persons, and their families, receiving services from the facilities either operated by, certified by or under contract with ODMHSAS.
- (2) The services by mental health, substance abuse and domestic violence and sexual assault providers be rendered in an environment of safety, dignity and with respect to the rights of those persons and their families.
- (3) Adherence to and compliance with applicable state and federal statutes, including but not limited to Title 43A of the Oklahoma Statutes and the Public Health Services Act (42 U.S.C.) by all facilities operated by, under contract with, and certified by ODMHSAS.

450:1-1-6. Public records

- (a) Official records. Official records of the Board and the Department include information, rules, forms, the record in individual proceedings, records submitted to the Department, and other public records in accordance with the Oklahoma Open Records Act 51 O.S. §§ 24A.1, et seq.
- (b) Copies. Copies of official records of the Board or Department, not privileged or protected from publication by law, shall be available to the public.

450:1-1-7. Requests for agency public information

Any person making a request pursuant to 450:1-1-6 shall comply with the following:

- (1) The request must be in writing and may be mailed to Oklahoma Department of Mental Health and Substance Abuse Services, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277, or sent via facsimile to (405) 522-3650, or made in person during regular office hours between 8:00 a.m. and 5:00 p.m.
- (2) The request must describe the record(s) requested, be signed by the party making the request, and have the party's mailing address and telephone number.

(3) Whenever possible, requests shall be made to the division or area of the Department that maintains the records. Requests by attorneys in formal litigation must go through the Legal Division. Requests for personnel records that are not confidential must go through the Human Resources Management Division. Requests for records regarding facilities or programs certified by the Board must be directed to the Provider Certification Division. Requests for records regarding persons contracting with the Department must be directed to the Contracts Division. Requests from the media for records must go through the Communications Division. Requests for records regarding Board meetings must go through the Office of the Commissioner. If the division or area that maintains the records is unknown to the party making the request, the request should be directed to the Legal Division.

(4) The requesting party shall pay a fee for copies. Said fee shall be twenty-five cents (25¢) per page, twelve dollars (\$12.00) per 3½-inch diskette, and \$1.00 per page for certified documents. For commercial requests or those that would cause excessive disruption of office function, such as documents that are archived, either internally or with the Oklahoma Archives and Records Commission, a search fee will be charged based upon the hourly rate of the individual(s) searching for, and locating, the requested records.

(5) Mental health and substance abuse treatment records and client records of a domestic violence or sexual assault program are confidential and not subject to release by statutes and federal regulations including, but not limited to, 43A O.S. §§ 1-109, 3-313, 3-422 and 3-423; 63 O.S. § 1-1502; and 42 CFR, Part 2.

(6) Certain ODMHSAS employee personnel records are confidential and not subject to the Oklahoma Open Records Act, including employee evaluations, payroll deductions, applications submitted by persons not hired by ODMHSAS; internal personnel investigations including examination and selection material, employees home addresses, telephone numbers, and social security numbers, medical and employee assistance records, and other personnel records where disclosure would constitute a clear invasion of privacy. Personnel records information that are subject to release are the application of a person who becomes an employee of the Department, gross receipt of public funds, dates of employment, title or position and any final disciplinary action resulting in loss of pay, suspension, demotion or termination.

(7) Any other document protected, as confidential, by any Oklahoma or federal law, or Oklahoma or federal administrative rule, or by order of a court of competent jurisdiction, is not subject to the Oklahoma Open Records Act.

450:1-1-8. Forms

In order to maintain efficiency and uniformity in the administration of duties, ODMHSAS will devise and maintain forms for use by any party. The forms may be revised periodically to insure uniformity, efficiency, and expediency. The prescribed forms must be used by all affected parties unless another form is approved by ODMHSAS prior to its submission, or other provisions are stated in subsequent chapters. Each division or departmental area shall make available to the public all rules and other written statements of policy adopted or used in the discharge of its functions, all forms, applications and instructions for use by the public, including those required to apply for a certification. Additionally, forms may be acquired by request under 450:1-1-7.

450:1-1-9. Procedures to secure a declaratory ruling as to the applicability of any rule or order of ODMHSAS

(a) Any person subject to the rules contained in rules of ODMHSAS (Oklahoma Administrative Code Title 450) may petition for a declaratory ruling as to the applicability of a specific rule and its effect on petitioner. In petitioning ODMHSAS for a declaratory ruling, the following procedures must be followed:

- (1) The petition must be in writing and submitted to the Rules Liaison of ODMHSAS in person at 1200 N.E. 13TH Street, Oklahoma City or by mail to P.O. Box 53277, Oklahoma City, OK 73152;
- (2) The petition shall state with specificity the rule in question;
- (3) The petition shall state a clearly and with specificity the bases for the action and the action or relief sought;
- (4) The petition shall pose the specific question(s) to be answered by ODMHSAS; and
- (5) The petitioner or petitioner's authorized representative shall print his or her name address and telephone number on the petition and sign it.

(b) The petition will be stamped upon receipt by ODMHSAS to show the date of submission. The petition shall be referred to the appropriate staff persons to make a recommendation to the Commissioner, who shall issue a ruling within 30 days.

(c) The petitioner shall be notified of the declaratory ruling in writing by the U.S. Mails, certified mail, return receipt requested.

(d) The ruling shall become final unless, within 10 days, the petitioner files with the Rules Liaison a written request for a hearing before the Board. If the petitioner requests such a hearing, the matter shall be placed on the agenda of the next scheduled Board meeting if it is filed ten (10) calendar days or more prior to the meeting. If the request is filed less than ten (10) days prior to the next scheduled Board meeting, it will be placed on the agenda of the following meeting.

(e) At the hearing of the matter by the Board, the petitioner and Department staff shall be permitted to present oral argument to the Board, the length of which shall be limited by the chair of the Board. At the conclusion of the presentation of the matter, the Board shall render a decision on the petition and a written decision shall follow within 10 days.

(f) A declaratory ruling or refusal to issue such ruling, shall be subject to judicial review in the manner provided for review of decisions in individual proceedings in the Oklahoma Administrative Procedures Act (75 O.S. § 307).

450:1-1-10. Procedures to petition the ODMHSAS to request the promulgation, amendment or repeal of a rule

Any person affected either by a rule adopted and promulgated by ODMHSAS, or the lack of a rule and regulation may petition ODMHSAS to promulgate, adopt, amend or repeal the rule pursuant to 75 O.S. § 305 and in accordance with this section.

(1) The petition must be in writing and submitted to the Rules Liaison of ODMHSAS in person at 1200 N.E. 13th Street, Oklahoma City or by mail to P.O. Box 53277, Oklahoma City, OK 73152 setting forth:

- (A) The proposed amendment, promulgation, or repeal of a specific rule.
- (B) The reason for the petition to repeal, promulgate, or amend a rule.
- (C) The effect that the repeal, amendment or promulgation of the rule would have on the

petitioner.

- (2) The petitioner must print his or her name, address and telephone number on the petition and it must be signed by the petitioner.
- (3) The Department shall timely respond to such petition, either by initiating rulemaking proceedings or by denying the petition.
- (4) The petitioner will be notified by regular mail if rulemaking proceedings are initiated.
- (5) A petition for rulemaking will be deemed denied if the Department has not initiated rulemaking proceedings within thirty (30) calendar days after the petition is submitted.

**SUBCHAPTER 3. CONTRACTS FOR MENTAL HEALTH, SUBSTANCE
ABUSE, DOMESTIC VIOLENCE AND SEXUAL ASSAULT
AND RESIDENTIAL CARE SERVICES**

PART 1. ELIGIBILITY TO CONTRACT

450:1-3-1. Purpose

The purpose of this Part is to delineate the criteria for eligibility for entities to contract with the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) for the provision of mental health, substance abuse, domestic violence or sexual assault, and residential care services to the public as permitted or required under Title 43A of the Oklahoma Statutes.

450:1-3-2. Definitions [REVOKED]

450:1-3-3. Applicability

This part is applicable to all entities presently under contract with ODMHSAS to provide mental health, substance abuse, domestic violence and sexual assault, and residential care services; and to all entities which may either be, or desire to be, considered for such contracts.

450:1-3-4. Criteria for eligibility to contract

The criteria for eligibility to contract with the ODMHSAS are as follows:

- (1) The entity shall exist in conformity with Oklahoma Statutes regulating said entity, and provide such proof. In addition, if said entity purports to be a not for profit corporation, the proof of exemption from federal taxes under the U.S. Internal Revenue Service Code shall be made.
- (2) Revocation or non-renewal of an entity's certification by ODMHSAS shall result in contract termination for any service requiring such certification as of the date of ODMHSAS action.
- (3) For any facility requiring certification, the facility shall have deficiencies of no more than 20% of the standards on which the facility is reviewed.

PART 3. CONTRACTS AND CONTRACTING PROCESSES

450:1-3-14. Purpose

The purpose of this Part is to describe the contracts and contracting processes of ODMHSAS for the provision of mental health, substance abuse, domestic violence or sexual assault, and residential care services to the public.

450:1-3-15. Applicability

This Part is applicable to all entities presently under contract to provide mental health services, substance abuse services, domestic violence and sexual assault services, community-based structured crisis services, and residential care services, and to all entities which may either be, or desire to be, considered for such contracts.

450:1-3-16. Contract forms

Contracts are in a standardized form and format as determined by ODMHSAS which may be revised from year to year to meet changing state and federal statutes and regulations, and the requirement of ODMHSAS to fulfill its functions and responsibilities.

450:1-3-17. Contract execution ODMHSAS [REVOKED]

450:1-3-18. Contract type [REVOKED]

450:1-3-19. Competitive bidding

With regard to competitive bidding:

- (1) Contracts which are not based upon fixed uniform rates shall be competitively bid unless said contract is exempt from competitive bidding.
- (2) Contracts based upon fixed uniform rates, which have been previously approved by the Department of Central Services, set by the Board, on the recommendation of the Commissioner of ODMHSAS, are not subject to competitive bidding [74 O.S. § 85.7 (11)].

450:1-3-20. Contract, services performance

Contracts shall require performance of specific service(s) to be performed). Where the services cannot be broken down into units, specifically measurable and reviewable services shall be stated. Additionally, contracts may contain requirements of performance based upon measurable quality outcome indicators.

450:1-3-21. Contract renewal

- (a) Contracts for community mental health services, substance abuse services, domestic violence and sexual assault services, community-based structured crisis services and residential care services are considered during the third (3rd) and fourth (4th) quarter of the ODMHSAS fiscal year, for contracting in the following fiscal year.
- (b) Consideration for renewal shall include a review of performance of the current contract including, but not limited to, measurable outcome indicators, target populations served, levels of performance of specific services, having deficiencies or no more than 20% of the standards reviewed, the existence of any patients' rights violations, and cost effectiveness of the delivery of services.
- (c) If ODMHSAS determines the contractual relationship shall be renewed, it shall be in a new contract for the upcoming fiscal year and may or may not contain the same terms, conditions, form and format as the previous contract.

450:1-3-22. Contractor reimbursement rates

Reimbursements to contractors for mental health, substance abuse, domestic violence and sexual assault, and residential care services shall be considered and set in the manner described as follows:

- (1) Contractors shall annually, or as otherwise prescribed, submit to ODMHSAS a uniform cost report in the form and format determined by ODMHSAS, and within time-frames established by ODMHSAS.

- (2) ODMHSAS staff shall review and analyze these cost reports, requesting where deemed necessary the submission of supporting clarifying information within fifteen (15) days of said request.
- (3) ODMHSAS staff may recommend to the Board fixed uniform rates for services, taking into consideration variables such as average costs, appropriate inflationary factors, capitation methods, performance outcome measures, staff credentials and available funding.
- (4) Prior to submitting to the Board the proposed rates or changes to existing rates, the following shall occur:
- (A) The ODMHSAS shall provide written notice of an open hearing on the proposed fixed rates to each applicable contractor of record.
 - (B) The ODMHSAS shall conduct, and make a summary of, the scheduled open hearing.
- (5) Consideration of the proposed fixed rate by the Board shall not occur until the Director of Department of Central Services has been provided with, pursuant to 74 O.S. § 85.7:
- (A) Thirty (30) days written notice of the Board Meeting to consider the uniform rates of reimbursement;
 - (B) A copy of the Board Meeting agenda item(s) concerning the proposed rate(s); and
 - (C) All supporting documentation and materials regarding the reimbursement rates being proposed.
- (6) The Board shall, at the meeting referenced in (5)(A) and (B) of this section, separately consider each proposed fixed and uniform rate of reimbursement. These rates, if adopted, shall then take effect on a date determined by the Board when the rates are considered for adoption; and remain in effect until subsequent Board action.
- (7) All revisions shall be examined, proposed, considered and adopted pursuant to this section.

SUBCHAPTER 5. PROCEDURE IN INDIVIDUAL ADMINISTRATIVE PROCEEDINGS

450:1-5-1. Individual proceedings

(a) Article II of the Administrative Procedures Act ("APA"), 75 O.S. §§ 308a, *et seq.*, governs individual proceedings by ODMHSAS or the Board for revocation, suspension and non-renewal of certification or for reprimand of certified facilities.

(b) Further, this chapter sets forth the procedural aspects of individual proceedings and hearings provided for in accordance with the Administrative Procedures Act.

450:1-5-2. Definitions [REVOKED]

450:1-5-3. Persons affected by individual actions

The Board directs that ODMHSAS may bring an individual proceeding against any person or entity certified by the Board or ODMHSAS for violation of Title 43A of the Oklahoma Statutes or the rules of the ODMHSAS as set forth in Title 450 of the Oklahoma Administrative Code.

450:1-5-4. Types of sanctions

The following administrative sanctions may be taken against a respondent:

- (1) Non-renewal of certification
- (2) Revocation of certification
- (3) Reduction in certification
- (4) Suspension of certification
- (5) Reprimand

450:1-5-5. Petition and notice in individual proceedings

(a) **Petition and Notice.** In the event the Board or ODMHSAS determines action should be taken, an individual proceeding may be initiated by filing a petition and notice with the Hearing Clerk for ODMHSAS, who shall be designated by the Commissioner, and by serving the petition on all respondents. The petition and notice shall include a statement of the legal authority and jurisdiction under which the action is taken, reference to the statutes and rules involved, a short and plain statement of the matters asserted and the relief requested. The petition may allege facts by attaching and incorporating a document by reference. The petition and notice shall provide the action shall commence and become effective fifteen (15) calendar days after receipt of said notice by the respondent, unless the respondent timely files a written request for a hearing with ODMHSAS.

(b) **Request for hearing.** A request for hearing will be timely filed if said request is in writing and received by the Hearing Clerk of ODMHSAS within ten (10) calendar days of the date the party received the petition and notice. If a timely written request for a hearing is not filed by the respondent, the allegations in the petition shall be deemed confessed by the respondent and the action will become final as set forth herein. If the written request for hearing is timely filed, such hearing shall be scheduled before the Commissioner or an Administrative Hearing Officer at least fifteen (15) days from the date said request is filed, and the parties shall be notified of the date, time and place of the hearing. If an emergency

exists, a hearing may be conducted without the filing of a petition and without waiting fifteen (15) days.

450:1-5-5.1. Service of petition and notice

(a) **Service.** The petition and notice shall be served on the respondent(s) personally or by certified mail, return receipt requested to the address of the respondent(s) on file with the Department.

(b) **Proof of service.** Proof of service shall be filed with the hearing clerk.

(c) **Substitute service.** If the Department is unable to obtain service on a respondent, the petition and notice shall be mailed by regular mail to the last known address of the respondent, and the Department shall file an affirmation service was attempted.

(d) **Service of other papers and documents.** Service of all other papers and documents connected with an individual proceeding shall be served on the parties or their counsel by delivering a copy or via regular mail or facsimile.

450:1-5-5.2. Emergency actions

When the Commissioner or Hearing Officer finds that the public health, safety or welfare requires action be taken immediately and when such a finding is incorporated in an order, emergency action or summary suspension of a certification may be ordered pending the filing of a petition or the outcome of an individual proceeding.

450:1-5-5.3. Procedures in individual proceedings generally

The order of procedure in all individual proceedings shall generally be governed by the APA, Oklahoma Pleading Code and the Oklahoma Discovery Code. Any matter of practice or procedure not specified will be guided by the practice and procedure followed by the district courts of this state.

450:1-5-5.4. Prehearing conference

A pre-hearing conference may be ordered and scheduled by the Commissioner or the Hearing Officer on his own motion or upon the request of any party. The Commissioner or Hearing Officer may authorize the conference to occur by teleconference. The subjects and objectives of the pre-hearing conference shall be similar to those for pretrial proceedings in district courts.

450:1-5-6. Continuances

(a) **Continuance by ODMHSAS.** The Commissioner or the Hearing Officer may continue or adjourn the proceedings at any time for a specified time, with notice or motion.

(b) **Continuance by motion of parties.** Except for good cause shown, or by agreement of all parties, no continuance will be granted upon motion of a party unless written request therefore is filed and served on all parties of record and filed with the Hearing Clerk at least seven (7) days prior to the date set for hearing. A stipulation for continuance among all parties of record ordinarily will be approved, unless the Commissioner or the Hearing Officer determines that the public interest requires otherwise.

450:1-5-7. Discovery

(a) **Purpose.** Discovery is designed to enable a party to obtain relevant information needed for presentation of the party's case. This section is intended to provide a simple method of discovery.

(b) **Explanation.** Discovery is a process apart from the hearing whereby a party may obtain information from another person which has not otherwise been provided. This information is obtained for the purpose of assisting the parties in developing, preparing and presenting their cases.

(c) **Methods.** Discovery shall be conducted generally in accordance with Section 315 of the APA and as set forth in the Oklahoma Discovery Code. Additionally, the Commissioner or the Hearing Officer may enter specific orders directing the conduct of discovery.

450:1-5-8. Protective orders

(a) The Commissioner or the Hearing Officer at the hearing or at anytime upon application of a party, with or without notice, may make such orders relating to discovery as may be necessary or appropriate for the protection of the parties, and to prevent hardship to and excessive burden upon a party. Such orders may, among other subjects, limit the scope of depositions, prohibit questions or subjects of inquiry, require or excuse answers to questions on deposition, limit or excuse, in whole or in part, production of documents or answers to interrogatories, and shorten or extend the time within which any act shall be performed. Disclosure of client identification shall only be ordered pursuant to state and federal law.

(b) The Commissioner or the Hearing Officer may make appropriate orders, including dismissal of a proceeding or denial of relief, as may be warranted for failure or refusal to comply with an order issued pursuant to this rule.

450:1-5-9. Subpoenas

(a) **Issuance and service.** Subpoenas for the attendance of witnesses, the furnishing of information and the production of evidence shall be issued by the Hearing Clerk upon request by a party. As an officer of the court, an attorney authorized to practice law in Oklahoma may also issue and sign subpoenas. Filing a formal request for the issuance of subpoenas shall not be required. Subpoenas shall be served and a return made in the same manner as provided in the Oklahoma Pleading Code, 12 O.S. § 2004.1.

(b) **Failure to obey.** The Commissioner or the Petitioner may seek an appropriate judicial proceeding to compel compliance by persons who fail to obey a subpoena, who refuse to be sworn or make an affirmation at a hearing or who refuse to answer a proper question during a hearing. The hearing shall proceed despite any such refusal but the Commissioner or the Hearing Officer may, in his discretion at any time, continue the proceedings as necessary to secure a court ruling.

(c) **Motions to quash.** Any person to whom a subpoena is directed, may file a motion to quash or limit the subpoena with the Hearing Clerk, setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope and the Commissioner or Hearing Officer will rule on the motion.

450:1-5-10. Conduct and record of hearing

(a) **Open to public.** Every hearing before ODMHSAS shall be conducted by the Commissioner or designated Hearing Officer. All hearings shall be open to the public unless a protective order is entered for protection of consumer confidentiality; however, upon motion of a party to the proceeding, the Hearing Officer may exclude from the hearing room any witness not at that time under examination. A party to the proceeding and that party's attorney may not be excluded.

(b) **Record.** All testimony shall be taken on the record unless otherwise designated by the Hearing Officer. An electronic recording of the hearing proceedings shall be made. The recording will not be transcribed as a matter of course. The electronic recording of ODMHSAS shall be the official record. Copies of the recordings shall be provided to a party on written request. The cost of transcription, if done, shall be borne by the party having the recording transcribed.

(c) **Court reporter.** A party may have the proceeding transcribed by a court reporter at the expense of the party. Each party requesting copies shall make arrangements for such with the reporter, and pay the costs.

(d) **Maintenance of the record.** The record of a proceeding and the file containing the notices and the pleadings will be maintained by the Hearing Clerk in a location designated by the Hearing Clerk. All pleadings, motions, orders and other papers submitted for filing in an individual proceeding shall be stamped with the date filed by the Hearing Clerk upon receipt.

(e) **Designation on appeal.** On an appeal to district court, the parties may designate and counter-designate portions of the record to save costs, following the procedures in the APA.

450:1-5-11. Hearing officers

(a) **Exercise of authority.** The Commissioner shall appoint at least one individual who is a licensed attorney to act as the Administrative Hearing Officer in individual proceedings filed before the Department of Mental Health and Substance Abuse Services.

(b) The Administrative Hearing Officer shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. He or she shall have all powers necessary to that end unless otherwise limited by law, including but not limited to, the authority to:

- (1) Administer oaths and affirmations;
- (2) Rule upon objections and offers of proof and receive relevant evidence;
- (3) Rule upon the institution of discovery procedures as appropriate;
- (4) Convene a hearing as appropriate, regulate the course of the hearing, examine any witness in order to clarify issues; maintain decorum and exclude from the hearing any disruptive persons;
- (5) Exclude from the hearing any witness whose later testimony might be colored by testimony of other witnesses or any person whose presence might have a chilling effect on testifying witness;
- (6) Rule on all motions, witness and exhibit lists and proposed findings;
- (7) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

- (8) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and non-repetitious;
- (9) Make inquiries of the parties or witnesses for the purpose of clarification or fact findings to insure a fair and impartial decision;
- (10) Render decisions pursuant to the particular action taken;
- (11) May require, or allow, the filing of briefs by the parties, and may designate the order and time for filing briefs and reply briefs;
- (12) Close the record when all interested parties have had the opportunity to be heard and to present evidence; and
- (13) Issue proposed final orders.

(c) **Disqualification of hearing officer.**

- (1) The Administrative Hearing Officer shall withdraw from any individual proceeding in which he cannot accord a fair and impartial hearing or consideration, stating on the record the reasons therefore, and shall immediately notify all parties of the withdrawal.
- (2) Any party may file a motion requesting the Administrative Hearing Officer withdraw on the basis of personal bias or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for the disqualification. The Administrative Hearing Officer shall rule on said motion.

450:1-5-12. Sanctions for non-compliance with hearing and discovery procedures

The Hearing Officer may impose sanctions upon the parties as necessary to serve the ends of justice.

450:1-5-13. Order of hearing

- (a) **Appearances and default.** At the hearing, every party shall announce an appearance. An individual may appear on their own behalf or be represented by an attorney. A corporation must be represented by counsel. Any respondent who fails to appear as directed, after service of the petition and notice of hearing as provided by these rules, may be determined to have waived the right to appear and present a defense to the allegations contained in the petition, and the Hearing Officer may default the party and issue an order sustaining the allegations.
- (b) **Preliminary matters.** The following shall be taken up prior to receiving evidence:
 - (1) The ODMHSAS and other parties may offer preliminary exhibits, including pleadings necessary to present the issues to be heard.
 - (2) Ruling shall be made on any pending motions, including requests for delivery of documents.
 - (3) Stipulations of fact and stipulated exhibits shall be received.
 - (4) Parties shall make opening statements where appropriate.
 - (5) Any other preliminary matters appropriate for dispositions prior to offers of evidence.
- (c) **Rules of evidence.** The rules of evidence shall be those specified by the APA.
- (d) **Presentation of the case.** At the hearing, each party may make a brief opening statement, present witnesses and exhibits, cross-examine adverse witnesses, and make closing arguments.

450:1-5-14. Proposed Order

Not more than twenty (20) calendar days after conclusion of the hearing, the Commissioner or the Hearing Officer shall issue a proposed order with findings of fact and conclusions of law.

If ODMHSAS proves its allegations in the petition and notice by clear and convincing evidence, the Commissioner or the Hearing Officer shall issue an order sustaining the allegations. If ODMHSAS does not meet its burden, the Commissioner or Hearing Officer shall issue an order in favor of the respondent(s). The Hearing Clerk shall file and serve the proposed order on ODMHSAS and respondent(s) by certified mail, return receipt requested.

450:1-5-15. Hearing before the Board and Final Order

(a) **Request for hearing.** The proposed order shall become final unless a party files and serves a written request for a hearing by the Board with the Hearing Clerk within fifteen (15) calendar days of the filing of the proposed order.

(b) **Briefs and exceptions.** In the event a hearing by the Board is requested, all parties will be given the opportunity to file briefs and exceptions to the proposed order.

(c) **Hearing.** When a request for a hearing is filed, the matter will be set on the agenda of the next Board meeting, unless the request is filed fifteen (15) calendar days or less prior to the next scheduled Board meeting, in which case it will be set on the agenda of the following meeting. At the Board meeting, the parties shall be permitted to present their briefs and oral argument; the length of oral argument shall be determined by the chair of the Board. Upon conclusion of oral argument by the parties, the Board may convene in executive session to deliberate the matter.

(d) **Issuance and service of final order.** Within thirty (30) calendar days after the hearing before the Board, the Board shall issue a Final Order stating the findings of fact made and the conclusions of law reached, and specifying the action to be taken. The Hearing Clerk shall file the Final Order and serve it on the parties; the respondent(s) shall be served by certified mail, return receipt requested.

(e) **Appeal.** A party may appeal a Final Order as provided in the APA.

450:1-5-16. Settlement

Unless precluded by law, individual proceedings may be resolved by agreed settlement or consent order, with the concurrence of the Commissioner, or the Chief Operating Officer or the Hearing Officer.

SUBCHAPTER 7. CHARGES AND ELIGIBILITY FOR ODMHSAS SERVICES

450:1-7-1. Purpose

The purpose of this Subchapter is to set forth the rules of the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) with regard to the charges for services within ODMHSAS operated facilities and the rates of reimbursement to contractors with ODMHSAS.

450:1-7-2. Applicability

This Subchapter is applicable to all ODMHSAS operated facilities and to entities contracting with ODMHSAS under OAC 450:1 Subchapter 3.

450:1-7-3. Definitions [REVOKED]

450:1-7-4. Charges, ODMHSAS operated facilities

(a) At least annually ODMHSAS shall review all charges for services provided at its facilities, and, if warranted, shall propose a change in the rate of charges for any service(s), based upon the cost of providing said services, or changes in the method/form of reimbursement under the U.S. Social Security Act Titles for Medicare and Medicaid.

(b) Charges for inpatient and outpatient mental health and substance abuse services offered by ODMHSAS facilities are as follows:

(1) Intermediate inpatient treatment	\$400.00 per day;
(2) Acute inpatient	\$400.00 per day;
(3) Medically supervised detoxification services	\$173.00 per day;
(4) Non-medical detoxification services	\$153.00 per day;
(5) Residential substance abuse treatment	\$ 85.00 per day;
(6) Intensive residential substance abuse treatment	\$187.00 per day;
(7) Residential treatment for dually diagnosed	\$ 85.00 per day;
(8) Halfway house	\$ 46.00 per day;
(9) Enhanced residential mental health treatment	\$225.00 per day;
(10) Residential treatment of mentally retarded/mentally ill	\$350.00 per day;
(11) Residential treatment for children and adolescents	\$285.00 per day;
(12) Acute treatment of children and adolescents	\$500.00 per day;
(13) Competency evaluation	\$ 81.74 per hour;
(14) Evaluation and assessment	\$ 81.74 per hour;
(15) Clinical testing	\$ 83.01 per hour;
(16) Mobile crisis service	\$122.60 per hour;
(17) Crisis intervention	\$122.60 per hour;
(18) Individual counseling	\$ 81.74 per hour;
(19) Group counseling	\$ 56.28 per hour;
(20) Family & marital counseling	\$ 53.22 per hour;
(21) Home based services to children & family	\$ 36.46 per hour;
(22) Individual rehabilitative treatment	\$ 63.77 per hour;
(23) Group rehabilitative treatment	\$ 16.88 per hour;
(24) Case management services	\$ 83.53 per hour;

(25) Intensive case management services	\$ 83.53 per hour;
(26) Treatment plan review	\$100.09 per visit;
(27) Pharmacological management	\$ 33.57 per visit;
(28) Medical review	\$ 23.64 per visit;
(29) Treatment planning	\$135.08 per visit;
(30) Day treatment – mental health	\$ 18.28 per hour;
(31) Psychosocial rehabilitation services	\$ 18.28 per hour;
(32) Community-based structured emergency care	\$ 19.70 per hour.

450:1-7-5. Reimbursement rates, contractors [REVOKED]

450:1-7-6. Liability of Consumer for care and treatment -- Eligibility for Waiver of Liability

(a) A consumer at a facility within the Department is responsible for payment and liable for his care and treatment unless he or she has received a waiver of the indebtedness from the Department.

(b) A consumer at a facility within the Department shall be granted a waiver from payment for services if the following criteria are met:

(1) The individual must be in need of behavioral health services. An individual shall be considered to be in need of behavioral health services if treatment is needed to stabilize, reduce or eliminate the symptoms of, or prevent worsening of any of the following conditions for which a facility within the Department offers treatment needed based on the diagnosis and level of care:

- (A) A diagnosable behavioral health condition as defined by the current DSM, excluding a sole diagnosis of developmental disorders or dementia disorders;
- (B) A presenting problem(s) that indicates a behavioral health illness or condition;
- (C) A level of functioning that indicates the need for behavioral health treatment based on a standard assessment instrument; or
- (D) A behavioral health crisis.

(2) The individual must be uninsured. An individual shall be considered uninsured if one of the following apply:

- (A) The individual is not covered by private or public insurance and receives no insurance benefits for behavioral health services;
- (B) The individual has used all available benefits or coverage allowed for behavioral health services;
- (C) The individual has limited benefits for behavioral health services, but the service(s) needed by the individual are not covered by the individual's insurance or plan; or
- (D) Except for housing and vocational services, persons receiving behavioral health services through a health maintenance organization are considered to be fully covered for behavioral health services and are not eligible for a waiver of liability.

(3) The individual is indigent. An individual shall be considered indigent if he or she is at or below 200% of the Federal Poverty Guidelines based solely on the individual's applicable income. The indigence requirement does not apply to persons receiving emergency services or to persons 17 years of age or younger.

(A) "Income" is total annual cash receipts before taxes from all sources, and includes money wages and salaries before any deductions, net receipts from self-employment, regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Temporary Assistance for Needy Families and Supplemental Security Income), training stipends; alimony, child support, military family allotments or other regular support from an absent family member or someone not living in the household, private pensions, government employee pensions, regular insurance or annuity payments, college or university scholarships, grants, fellowships and assistantships, dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

(B) "Income" does not include non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied non-farm or farm housing, and federal non-cash benefit programs such as Medicare, Medicaid, food stamps, school lunches, loans and housing assistance.

(c) Before any waiver of liability is granted, a report or questionnaire must be prepared which indicates the demographic information including the consumer's name, address if any, telephone number if any, and social security number, the consumer's income, number of dependents and third-party insurance or payer information. Income must be verified by the facility obtaining one of the following:

- (1) The consumer's Internal Revenue Service Form W-2 from the previous year;
- (2) The consumer's federal or state income tax return from the previous year;
- (3) Two recent, consecutive paycheck stub(s) showing the pay date, hours worked, types of pay and gross rate of pay;
- (4) A Medicaid card; or
- (5) Any government document that verifies income.

If the facility is unable to verify the consumer's income by an independent source, the consumer or a family member of the consumer must sign an income verification statement before a waiver of liability may be granted.

(d) The executive director of the facility within the Department or his or her designee shall make a determination of whether the consumer meets the criteria for waiver of liability and sign a statement, which must be placed in the consumer's record at the facility, of the reasons for the waiver.

SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF FACILITIES/SERVICES

450:1-9-1. Applicability of certification

This subchapter applies to all entities which are subject to certification by the Board, as set forth in 43A O.S. § 3-306.1 (Community Mental Health Centers); § 3-314.1 (Domestic Violence Shelters and Programs, Sexual Assault Programs and Batterers Treatment Programs); § 3-315 (Community Residential Mental Health Facilities); § 3-317 (Community-based Structured Crisis Centers); § 3-415 (Alcohol and Drug Treatment Programs) and § 3-319 (Programs of Assertive Community Treatment).

450:1-9-2. Definitions [REVOKED]

450:1-9-3. Purpose of certification

The purpose of certification is to assess a facility's responsibility to the client, and delivery of acceptable services to the client. Responsibility to the client is demonstrated through the provision of suitable facilities, trained staff and needed services which are accessible, safe and confidential. In addition to the above is the demonstration of the willingness and ability of the governing authority and staff to provide the planning, budgeting and management of resources necessary to the continued existence and effectiveness of the facility/services.

450:1-9-4. Reviewing authority

The Board shall certify community mental health centers, community residential mental health facilities, domestic violence shelters and programs, sexual assault programs, batterers treatment programs, community-based structured crisis centers, alcohol and drug treatment programs and programs of assertive community treatment as cited in Section 450:1-9-1, and directs that such shall be carried out as stated in this subchapter.

450:1-9-5. Qualifications for certifications of facilities and programs and individuals

(a) Qualifications for certification are as follows:

(1) Compliance with applicable Standards and Criteria as set forth in the Chapter of OAC Title 450 regulating the area for which certification is being sought is required to qualify for certification. Specific Standards and Criteria are:

- (A) Chapter 16, Standards and Criteria for Community Residential Mental Health Facilities;
- (B) Chapter 17, Standards and Criteria for Community Mental Health Centers;
- (C) Chapter 18, Standards and Criteria for Alcohol and Drug Treatment Programs;
- (D) Chapter 19, Standards and Criteria for Domestic Violence and Sexual Assault Services;
- (E) Chapter 21, Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Instructors;
- (F) Chapter 22, Certification of Alcohol and Drug Assessment and Evaluation Programs Related to Driver's License Revocation;
- (G) Chapter 23, Standards and Criteria for Community-based Structured Crisis Centers;
- (H) Chapter 50, Certification of Behavioral Health Case Managers; and

(l) Chapter 55, Standards and Criteria for Programs of Assertive Community Treatment.

(2) An applicant for certification must also comply with applicable statutory licensing provisions.

(b) A certified Community Mental Health Center that provides alcohol and drug treatment services in the course of its outpatient or inpatient services, but has no designated or specialized alcohol and drug abuse treatment program component, shall not be subject to additional certification under the Certified Services for Alcohol- and Drug-Dependent Standards and Criteria in OAC 450, Chapter 18.

(c) A certified Community Mental Health Center providing alcohol and drug abuse treatment services as a designated or specialized program component shall be subject to certification under the Certified Services for Alcohol- and Drug-Dependent Standards and Criteria in OAC 450, Chapter 18.

(d) Certified Services for the Alcohol- and Drug-dependent providing community mental health services shall be subject to certification as a community mental health center in OAC 450, Chapter 17.

450:1-9-6.Procedures for application for certification

(a) Applications for certification as a community mental health center, community residential mental health facility, domestic violence shelter or program, sexual assault program or batterers' treatment program, community-based structured crisis center, alcohol and drug treatment programs, and programs of assertive community treatment must be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS and include the following:

(1) A fully completed ODMHSAS application for certification form signed by authorized officials;

(2) The necessary written documentation or supporting evidence required on the application for certification form; and

(3) The required certification fee in the form of a check or money order, payable to the Oklahoma Department of Mental Health and Substance Abuse Services.

(b) The following fees are required:

(1) Applicants for certification as a community mental health center must submit \$150.00 with an initial application and \$150.00 with each renewal application;

(2) Applicants for certification as an alcohol and drug treatment program shall submit \$100.00 with an initial application and \$100.00 with each renewal application; and

(3) Applicants for domestic violence shelters or programs, sexual assault programs and batterers' treatment programs shall submit \$100.00 with an initial application and \$100.00 with each renewal application.

Fees paid by applicants are not refundable.

(c) The application for certification form, required written documentation and fee must be submitted to Oklahoma Department of Mental Health and Substance Abuse Services, Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

(d) The application may require a listing of all services provided by the applicant, as well as specifics about the applicant including but not limited to governing authority, administrative, fiscal, all locations or sites where applicant will provide services and types of services to be

provided.

(e) If, after being certified, a facility desires to add a service location or offer a new type of service, the facility must submit an application for certification form, the required documentation and fee to Oklahoma Department of Mental Health and Substance Abuse Services, Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

450:1-9-7. Procedures for completion of certification process

(a) **Certification process.** Completion of the certification process will be done in cooperation between the applicant and ODMHSAS staff, and consists of:

- (1) a review by ODMHSAS of all application materials;
- (2) an on-site review of the facility and completion of the applicable site visit protocol by ODMHSAS;
- (3) a review of all records deemed applicable by the ODMHSAS ;
- (4) development and dissemination of report materials by ODMHSAS;
- (5) development and review of any needed plans of correction;
- (6) applicable follow-up on-site reviews; and
- (7) presentation by ODMHSAS staff of the review results and associated recommendations to the Board.

(b) **Initial applications.** All initial applications for certification shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled. If the applicant is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules, based on the initial on-site review findings, a plan of correction will not be requested and a notice of denial of the certification application shall be sent to the applicant by the Commissioner.

(c) **Length of certification process.** If an applicant for initial certification fails to achieve full certification within six (6) months, the applicant shall not receive full certification and a recommendation of non-renewal or revocation of the existing certification will be made to the Board. In such case, the applicant may reapply by filing a new application for certification form, and submitting the required documentation and fee to ODMHSAS.

(d) **Renewal applications.**

- (1) ODMHSAS will, prior to the renewal date, notify facilities the application for renewal of certification is due.
- (2) The facility shall submit its application for renewal before the expiration of its certification.
- (3) Renewal applications for certification shall be reviewed for completeness by ODMHSAS staff. If the facility is cited for deficiencies on 50% or more of the applicable standards and rules based on the site review findings, a plan of correction will not be requested and non-renewal will be recommended to the Board.
- (4) If, after being granted conditional certification, an applicant for renewal fails to achieve full certification within four (4) months, the applicant shall not receive full certification and a recommendation of non-renewal of the conditional certification will be made to the Board.

(e) **Site reviews.**

- (1) Initial, renewal or follow-up site reviews, based on the current certification status of the applicant, will be scheduled and conducted by designated representatives of the

ODMHSAS at each location or site of the applicant.

(2) Only one follow-up site review will be conducted on facilities receiving Conditional or Temporary Certification for the purpose of determining compliance with standards and the plan of correction. For a facility granted Temporary Certification, the site review will be conducted on standards not applicable during the initial certification visit, and a minimum of five (5) records shall be made available for review.

(3) A Site Review Protocol shall be completed during each site visit. Protocols shall contain the current ODMHSAS Standards and Criteria applicable to the facility.

(A) A facility must be prepared to provide evidence of compliance with each applicable standard.

(B) In the event the reviewer(s) identifies some aspect of facility operation that adversely affects client safety or health, the reviewer(s) shall notify the facility director and appropriate ODMHSAS staff. An immediate suspension of certification may be made by the Commissioner of ODMHSAS.

(f) **Accreditation status.** The ODMHSAS may accept accreditation granted by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF) or the American Osteopathic Association (AOA) as compliance with certain specific ODMHSAS standards as identified in the site review protocol. For such to be considered, the facility shall make application and submit evidence to the ODMHSAS of current accreditation status. This evidence shall include documentation of the program or programs included in the most recent accreditation survey, including reports of unannounced visits by the accrediting organization or subsequent actions initiated by the accrediting organization that may affect the accreditation status of the facility, the report of the survey and any corresponding plans of correction, and the dates for which the accreditation has been granted.

(g) **Deficiencies.** For each standard and rule not met by the facility a deficiency shall be cited.

(h) **Report to applicant and plan of correction.**

(1) During the course of the certification process, and prior to determination of certification status, ODMHSAS staff shall report the results of the on-site review to the facility. The facility shall receive written notice of the deficiencies in a Certification Report.

(2) The facility must submit a written plan of correction for each deficiency for approval within two (2) weeks of the receipt of the Certification Report. Approval of the plan of correction shall be required before the completed application for certification will be presented to the Board. However, if the facility is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules based on the initial site review findings, a plan of correction will not be requested.

(i) **Notification of Departmental recommendation for certification.**

(1) After completion of the on-site review and report on the Application for Certification, ODMHSAS staff shall prepare a recommendation on the certification status or application for the Board.

(2) Prior to the ODMHSAS staff's presentation of its recommendation of an applicant's certification to the Board, the ODMHSAS staff shall notify the applicant of:

(A) the recommendation, and

(B) the date and time of the Board meeting at which the facility's application, and the recommended certification will be presented; and

(C) the requirement of a facility receiving a recommendation of denial, non-renewal, conditional or temporary to have a representative present.

(j) **Actions on certification applications.** ODMHSAS staff shall make one of the following recommendations to the Board:

- (1) Certification with commendation;
- (2) Certification;
- (3) Conditional certification;
- (4) Temporary certification;
- (5) Denial of initial certification; or
- (6) Non-renewal of certification.

(k) If the Board approves a recommendation to deny an initial certification application, ODMHSAS shall send the applicant a notice of denial. If the Board approves a recommendation to not renew certification, an individual proceeding shall be initiated pursuant to Subchapter 5 to deny the renewal.

450:1-9-8. Duration of certification status

(a) Certification status of either "Certification with Commendation" or "Certification" shall be for the period of:

- (1) Three (3) years for Certified Community Mental Health Centers, Certified Alcohol and Drug Treatment Programs, Community-based Structured Crisis Centers, Certified Domestic Violence Shelters or Programs, Certified Sexual Assault Programs, Certified Treatment Programs for Batterers, and Certified Programs for Assertive Community Treatment.
- (2) One (1) year for Community Residential Mental Health Facilities.

(b) Conditional certification granted to applicants for renewal shall be for a period not to exceed four (4) months. During that period, a follow-up site review will be conducted within no less than thirty (30) days and no more than sixty (60) days following of the granting of conditional certification to ensure cited deficiencies have been corrected as provided in the plan of correction or to demonstrate continued correction and compliance with the previously cited deficiencies.

(c) Certification or conditional certification granted to an applicant shall become effective the first day of the month following the date of the action by the Board, provided however, that the Board may waive this requirement and make the certification or conditional certification effective immediately.

(d) Temporary certification granted to applicants for initial certification of a facility, location or level of service shall be for a period of six (6) months and shall become effective immediately following Board action. During that period, a follow-up site review will be conducted within no less than sixty (60) days and no more than ninety (90) days of granting temporary certification to ensure the deficiencies cited during the initial site visit have been sufficiently corrected and to assess the facility's compliance achieved with remaining applicable standards necessary to meet the requirements for certification.

(e) Certification is not transferable. A change of the ownership of a facility automatically terminates any certification status, requiring a application for certification by the new ownership. If the certified facility is owned by a corporation the following applies:

- (1) If the corporation is not-for-profit, a change in membership of the Board of Directors of more than fifty percent (50%) of the Directors in three (3) or less calendar months, unless such change was caused by the normal expiration of terms in accordance with the By-Laws of the Board of Directors, shall require the facility to be recertified.
 - (2) If the corporation is other than not-for-profit, a change in the ownership of more than forty per cent (40%) of the stock in the corporation from the owners at the beginning of the period of certification shall require the facility to be recertified.
 - (3) It is the responsibility of the facility to notify the ODMHSAS of the occurrence of either of the conditions requiring recertification as set forth in (1) and (2) of this subsection; and to request the application materials for recertification.
- (f) Certification may be suspended, revoked or not renewed with the bases for such action being delineated in Section 450:1-9-9 of this Subchapter.

450:1-9-8.1. Site reviews

ODMHSAS may conduct a site review or visit or an investigation, which may or may not be unannounced. Reasons for such review include but are not limited to:

- (1) determination of correction of cited deficiencies;
- (2) receipt of a complaint;
- (3) change in ownership, management or location;
- (4) substantial change in either the service provided or new service(s) initiated;
- (5) substantial turnover in staff at the executive or professional level;
- (6) change in statutorily required licensure status; and
- (7) change in external accreditation status.

450:1-9-9. Bases for a decision of nonrenewal, suspension, or revocation

A determination that the certification shall not be renewed, or that certification be suspended or revoked, may be made upon the following bases:

- (1) failure to comply with certification standards;
- (2) failure to comply with appropriate statutory licensing provisions;
- (3) violation of client rights or client confidentiality;
- (4) endangerment of the safety, health, and/or the physical or mental well-being of a client served by the program;
- (5) failure to comply with accreditation, inspection, safety, or building code regulations required by local, state, or federal authorities and laws;
- (6) defrauding a client, potential client, or third party payer;
- (7) inappropriate conduct by program staff or its governing authority;
- (8) utilization of treatment techniques which endanger the safety, health, and mental health or physical well-being of program clients; or
- (9) any other just cause.

450:1-9-10. Contingency for non-action by the Board

In the event the Board of Mental Health and Substance Abuse Services does not meet during the month a facility's certification is due for consideration, or is unable for any reason to consider the certification in a timely manner, any current certification status shall be automatically extended until the next meeting of the Board, unless to do so would endanger the health, welfare and safety of clients, and there would be a danger of imminent harm.

450:1-9-11. Hearings and appeals [REVOKED]

450:1-9-12. Reapplication following denial, suspension or revocation of certification

Reapplication for consideration of certification for any program for which certification has been suspended, revoked or not renewed will not be accepted or considered unless at least six (6) months has passed since the suspension, revocation or non-renewal.

450:1-9-13. Designated emergency examination facilities

(a) ODMHSAS shall maintain a list of facilities designated by the Commissioner as appropriate to conduct emergency examinations to determine if emergency detention is warranted.

(b) The following types of facilities may be placed on the list of designated emergency examination facilities:

- (1) Hospitals licensed by the Oklahoma State Department of Health;
- (2) Community Mental Health Centers certified by the Board pursuant to Chapter 17 of Title 450 of the Oklahoma Administrative Code;
- (3) Community-based Structured Crisis Centers certified by the Board pursuant to Chapter 23 of Title 450 of the Oklahoma Administrative Code;
- (4) Facilities operated by ODMHSAS; or
- (5) Hospitals accredited by JCAHO, CARF or AOA.

(c) A facility may request the Commissioner to designate the facility as an emergency examination facility to be placed on the list. The facility shall make a request in writing to the Provider Certification Division of ODMHSAS and verify it has the ability to conduct emergency examinations as defined in 43A O.S. § 5-206(4) and has one or more licensed mental health professionals as defined in 43A O.S. § 1-103(11) capable of performing the functions set forth in 43A O.S. §§ 5-207 and 5-208.

(d) The facility shall receive a letter from the Commissioner notifying the facility whether its request to be placed on the list of designated emergency examination facilities has been granted.

450:1-9-14. Designated emergency detention facilities

(a) ODMHSAS shall maintain a list of facilities designated by the Commissioner as appropriate for emergency detention.

(b) The following types of facilities may be placed on the list of designated emergency detention facilities:

- (1) Hospitals licensed by the Oklahoma State Department of Health;
- (2) Community Mental Health Centers certified by the Board pursuant to Chapter 17 of Title 450 of the Oklahoma Administrative Code;

(3) Community-based Structured Crisis Centers certified by the Board pursuant to Chapter 23 of Title 450 of the Oklahoma Administrative Code; and

(4) Facilities operated by ODMHSAS; or

(5) Hospitals accredited by JCAHO, CARF or AOA.

(c) A facility may request the Commissioner to designate the facility as an emergency detention facility to be placed on the list. The facility shall make a request in writing to the Provider Certification Division of ODMHSAS and verify it has the ability to detain a person in emergency detention as defined in 43A O.S. § 5-206(5) and comply with 43A O.S. §§ 5-208 and 5-209.

(d) The facility shall receive a letter from the Commissioner notifying the facility whether its request to be placed on the list of designated emergency detention facilities has been granted.

SUBCHAPTER 11. RESEARCH

450:1-11-1. Purpose

The purpose of this subchapter is to insure conformity with the requirements of the U. S. Department of Health and Human Services, Public Health Service, Office of Research Integrity in the event the ODMHSAS is the recipient of Public Health Service research grants, fellowships, or cooperative agreements; or is involved with such research grants, fellowships, or cooperative agreements on either a pass-through or oversight responsibility basis [42 CFR Part 50, Subpart A, and 42 CFR § 50.103(c)].

450:1-11-2. Applicability

The ODMHSAS, all subrecipients and all ODMHSAS contractors and their subcontractors involved with U.S. Public Health Services research grants, fellowships, or cooperative agreements are bound by this subchapter.

450:1-11-3. Policy, scientific misconduct allegations

- (a) For any research grants, fellowships or cooperative agreements by the (U.S.) Public Health Service for which the ODMHSAS is either the direct recipient, or involved as a financial pass-through agent, or has any oversight responsibility, the "Model Policy and Procedures for Responding to Allegations of Scientific Misconduct" published by the (U.S.) Public Health Service, Office of Research integrity, April 1995 (or any revisions/successor document thereto) shall be utilized by ODMHSAS for responding to allegations of scientific misconduct.
- (b) This subchapter shall be distributed to all ODMHSAS operated facilities; and all entities contracting with, and/or certified by ODMHSAS providing Mental Health, and/or Substance Abuse, and/or Domestic Violence and Sexual Assault Services.
- (c) This subchapter and a copy of the "Model Policy and Procedures for Responding to Allegations of Scientific Misconduct" shall be distributed to all ODMHSAS staff involved with, and any person or business entity with which ODMHSAS is involved with, in (U.S.) Public Health Service research grants, fellowships, and/or cooperative agreements.
- (d) Pursuant to the "Model Policy and Procedures for Responding to Allegations of Scientific Misconduct", the Research Integrity Officer for ODMHSAS shall be the Chief of the Decision Support Services, ODMHSAS Central Office. All allegations of scientific misconduct shall be made to the Research Integrity Officer.