



OKLAHOMA DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

Post Office Box 53277
Oklahoma City, OK 73152
(405) 522-3908

TITLE 450

CHAPTER 15. CONSUMER RIGHTS

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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 (ODMHSAS) and outlines the rules governing the operation of the ODMHSAS Office of Consumer Advocacy, including investigations of alleged consumer rights violations conducted by that Office.

450:15-1-2. Definition

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.

"Consumer" means an individual, adult or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contacts [43A O.S. § 1-103(g)] and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"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.

"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:

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

(2) Information compiled in anticipation of litigation.

"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 contacts 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, the unit, are met, to manage the estate or financial resources of the unit, or both. 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 licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

(C) a licensed clinical psychologist;

(D) a licensed professional counselor as defined in Section 1906 of Title 59 of the Oklahoma Statutes;

(E) a person licensed as a clinical social worker pursuant to the provisions of Section 1250 et seq. of Title 59 of the Oklahoma Statutes;

(F) a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes;

(G) a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes; or

(H) an advanced practice nurse as defined in Section 567.3a of Title 59 of the Oklahoma Statutes specializing in mental health.

"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:

- (A) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;
- (B) results in or creates the risk of injury to a consumer; or
- (C) unintentional excessive or unauthorized use of force.

"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.

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

"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.

"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. INPATIENT MENTAL HEALTH BILL OF RIGHTS

450:15-3-1. Applicability

This Part is applicable to all facilities providing inpatient mental health treatment services either operated by, certified by, or under contract with, ODMHSAS.

450:15-3-2. General rights statement

(a) Consumers shall retain all rights, benefits and privileges guaranteed by the laws and Constitution of the State of Oklahoma and the United States of America, except those specifically lost through due process of law.

(b) In addition to the rights described in (a) of this Section, all persons receiving inpatient mental health services shall have the rights guaranteed by this Part, referred to as the Inpatient Bill of Rights, unless an exception is specifically authorized by this Part or an order of a court of competent jurisdiction.

450:15-3-3. Notification of the Inpatient Bill of Rights

(a) Each consumer, upon admission to a facility, shall be notified of rights guaranteed by this Part.

(1) If the consumer is a minor, his parent or legal guardian shall also be informed.

(2) If the consumer has a court ordered guardian, the guardian shall be informed.

(b) Notification shall be accomplished by:

(1) Providing the consumer with a synopsis, as set forth in OAC 450:15-3-27 and, if requested, the full Inpatient Bill of Rights, OAC 450:15-3-4 through 450:15-3-25. If the consumer cannot understand the language in the synopsis, an oral explanation of the synopsis shall be given in a language the person can understand; and the provision of the Inpatient Bill of Rights shall be documented in the consumer's record and signed by the person giving the synopsis or explanation; and

(2) Posting the synopsis of, or the full Inpatient Bill of Rights, in a conspicuous place on each consumer living area, and in area(s) of the facility receiving consumers, visitors and the public.

(c) Facilities shall not have internal operating procedures more restrictive than the Inpatient Bill of Rights. Every consumer shall be notified of facility and unit procedures with which he or she is expected to comply, and the sanctions that could be imposed for violation.

(d) Employees and volunteers shall be oriented regarding consumers' rights and the constraints of this Part.

450:15-3-4. Right to contact relative or friend or attorney upon admission

Every consumer shall be allowed to contact a relative or friend and his or her attorney immediately upon admission, either by telephone or mail (43A O.S. § 5-201). No person shall interfere with this right.

450:15-3-5. Right to access to attorneys, personal physician, clergy

No limitation may be imposed on a consumer's right to communicate by phone, mail or visitation with his or her attorney(s), clergy and personal physician, except to the extent that reasonable times and places may be established. No consumer shall be coerced directly or indirectly into divulging the nature of the confidential communication.

450:15-3-6. Right to communication

(a) Every consumer is entitled to communicate at all times by uncensored, sealed letter mail, either sent out or received, with the director of the facility, relatives, friends, the court which ordered commitment, his or her personal attorney, any physician and other state, federal or local agencies and courts. Sealed mail either to, or from, consumers shall not be delayed in transmittal except as determined by the treating physician and documented in the consumer's clinical record. However, the executive director of the facility or designee may establish procedures regarding the delivery and opening of consumer mail if determined necessary for security or safety precautions.

(b) Every consumer is entitled to unimpeded, private and uncensored communication by telephone and by personal visit, with persons of his or her choice, except as determined by the treating physician and documented in the consumer's medical record.

(c) No correspondence received by the consumer shall be placed in the consumer's medical record, or any other of the facility's records unless such correspondence provides important information regarding the consumer's medical or mental condition. This prohibition does not apply to correspondence sent directly to facility staff from others.

(d) Each facility shall make telephones available throughout the facility to ensure calls can be conveniently made and received.

(e) Each facility shall make space available for visitation.

(f) Each facility shall provide writing materials and reasonable amounts of postage to ensure correspondence can be written and mailed for those who cannot procure the same.

(g) Reasonable times and places for the use of telephones and for visitation shall be established in writing and communicated to consumers and family, including posting of times and places in conspicuous places, such as the unit or facility bulletin boards in the consumer areas of units and in areas of the facility normally used by the public. Visitation times shall include a liberal mix of weekdays and weekend days, business hours and after-hours in order to maximize the opportunity for visitations.

450:15-3-7. Service of legal papers [REVOKED]

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) All occurrences or reports of abuse or neglect, whether by staff, consumers or others, shall be promptly reported to the person in charge of the facility. The facility director shall insure a critical incident report is completed for each alleged occurrence of abuse or neglect and an investigation conducted.

(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.

450:15-3-9. Right to freedom of movement

(a) The freedom of movement of a consumer shall not be restricted more than is necessary to provide treatment services, to prevent injury to the consumer or others or to prevent substantial property damage or as is determined necessary by the executive director of the facility or designee to ensure security and safety and the right to freedom of movement shall not be withdrawn from a consumer to punish or discipline, or as a convenience for staff or the facility. A forensic consumer's freedom of movement may be restricted more if determined by the treating physician in conjunction with the his or her legal status.

(b) Withdrawal of privileges must be decided by the treating physician and the reasons for restriction(s) documented.

450:15-3-10. Right to use of money

(a) For purposes of this Section, "money" includes any legal tender, note, draft, certificate of deposit, stock, bond, check or credit card.

(b) A consumer has the right of easy access to money in his or her personal account at the facility and to spend or otherwise use the money as he or she chooses, except as limited in this Section.

(c) The facility may require either all, or part, of the money which is on the person of a consumer, or which comes to a consumer, or which the facility receives on behalf of the consumer under a benefit arrangement, or otherwise, be deposited with the facility for safekeeping in a personal account in the consumer's name. The money, and transactions affecting it, shall be accounted for in the name of the consumer and recorded in the consumer's account records. The consumer, his or her attorney, or his or her legal guardian shall be provided a copy of the account and transactions at the consumer's or legal guardian's request.

(d) A consumer's easy access to his or her money and ability to spend money in his or her account may be denied or limited by the facility only after a determination is made by the treatment team, supported by facts, that the limitation is necessary and essential to prevent the consumer from unreasonably and significantly dissipating his or her assets. Any such denial shall be fully documented in the consumer's medical record. Even where denial is made, the consumer shall continue to be allowed to spend or use the money in ways which would not constitute unreasonable and significant dissipation of his or her assets or engaging in illegal activities including but not limited to exploitation of other consumers.

(e) The facility is prohibited from withdrawing funds from a consumer's personal account to pay for services rendered by the facility, except with the written consent of the consumer, if he or she is legally competent, or his or her legal guardian.

(f) Money in a consumer's personal account at the facility may be deposited with an outside financial institution at the request of the consumer if he or she is legally competent, or so deposited on the request of a legal guardian.

(g) All money, including earnings, in a consumer's personal account shall be delivered to the individual upon his or her release from the facility, or to his or her legal guardian if the individual is under a legal guardianship and the guardian requests the money be delivered to the guardian rather than directly to the individual.

450:15-3-11. Right to personal property

(a) Every consumer is entitled to receive, possess and use all his or her own personal property, including clothing, except in the circumstances and under the conditions below:

- (1) Prevent theft, loss or destruction of property;
- (2) Prevent the consumer from physically harming him or herself or others;
- (3) Achieve a compelling treatment objective if the personal property would interfere with the consumer's treatment plan;
- (4) To eliminate the introduction of functionally unsafe equipment into the premises not already specifically controlled by OAC 450:15-3-11 (a)(1); or
- (5) As otherwise listed in facility policy.

(b) Any personal property removed from a consumer's control as determined by the treatment team, and the reasons therefore, shall be noted in the consumer's record. Any personal property so removed shall be safely and prudently stored until it can be returned to the consumer or turned over to a person designated by the consumer with a receipt for the property being obtained. If the facility has concerns of the safety of property being returned, every effort shall be made to turn the property over to a person of the consumer's choice.

450:15-3-12. Right to practice religion of choice

Each consumer shall have the right to practice his or her religious beliefs and be accorded the opportunity for religious worship. No consumer shall be coerced into engaging in, or refraining from, any religious activity, practice or belief. A consumer who is an adherent to, or a member of, any recognized religious denomination, the principles and tenets of which teach reliance upon prayer or spiritual means alone for healing, shall have the right to choose this method of healing. Also, the parent of a minor person who has been admitted to a mental health facility shall have the right to choose healing by spiritual means through prayer rather than services provided by the facility.

- (1) However, should the decision to refuse traditional treatment recommended by the treating physician result in danger to the consumer or others in the facility, the facility shall have the right to seek judicial relief.
- (2) If the consumer has been admitted on a voluntary basis, and makes a decision to refuse traditional treatment recommended by the attending physician, the facility may decide not to serve the consumer and discharge him or her.

450:15-3-13. Right to vote

Each consumer who is eligible to vote according to law has the right to vote in all primary and general elections. Each facility shall make reasonable efforts to enable eligible persons to register to vote, to obtain applications for absentee ballots and comply with other requirements which are prerequisite to voting, and to vote.

450:15-3-14. Right to individualized, competent prompt treatment

- (a) Every consumer shall be provided with prompt, competent and appropriate individualized treatment that offers the consumer a realistic prospect of improvement. Consumers shall be afforded treatment by sufficient numbers of duly qualified facility personnel that meet applicable licensing or certification or accreditation standards and conform to applicable rules of ODMHSAS.
- (b) Every consumer or his or her legal guardian shall be afforded the opportunity to be involved in the consumer's treatment. Family members or significant others shall be afforded the opportunity to be involved in the consumer's treatment with the consent of the consumer.

450:15-3-15. Right to periodic review of treatment plan

- (a) Every consumer is entitled to receive a thorough treatment plan update to determine the value and appropriateness of the present care and treatment being received, the necessity of continuing the consumer's care in the facility rather than in a less restrictive environment outside the facility.
- (b) If the consumer is involuntarily committed, consideration shall also be given to whether the conditions which resulted in the consumer's commitment still exist.

450:15-3-16. Rights regarding medication and treatment during pre-screening detention

- (a) All consumers shall be free from unnecessary, inappropriate or excessive medication. Medications shall not be used for convenience of staff, to punish, or as a substitute for a treatment program.
- (b) During the detention periods authorized by 43A O.S. § 5-200 or during the time set forth for emergency examination, appropriate treatment and medication including psychotropic medications, may be administered to a consenting individual.
- (c) If a consumer refuses medication and constitutes a risk of harming self or others, then it is the physician's responsibility to initiate emergency detention or involuntary commitment pursuant to 43A O.S. §§ 5-206, et seq.
- (d) Treatment and medication may be administered to a non-consenting individual under the following conditions pursuant to 43A O.S. § 5-204:
 - (1) upon a written order of a physician who has personally examined the consumer; and
 - (2) who finds an emergency exists wherein such medication or treatment is necessary to protect the consumer, the facility, or others from serious bodily harm; and
 - (3) who so notes the emergency in the individual's medication record, with an explanation of the facts leading up to the decision to administer treatment and medication, including psychotropic medication. Use of involuntary medication shall not continue beyond the emergency unless either the consumer consents or the consumer is declared legally incompetent and the guardian consents.

(e) Seclusion and restraint may be administered to a non-consenting individual upon the written order of a physician who has personally examined the patient and who finds that seclusion or restraint is necessary to protect the patient, the facility, or other persons. The physician shall note in the patient's chart an explanation of the decision to administer seclusion and restraint. This shall not prohibit emergency seclusion and restraint pending notification of a physician.

(f) If the person is under the influence of psychotropic medication during any court hearing held pursuant to 43A O.S. § 5-400, the court and the jury, if any, shall be advised by the District Attorney at the beginning of such hearing that such consumer is under the influence of psychotropic medication, the purpose and effect of the medication.

450:15-3-17. Right to informed consent regarding treatment

(a) Consumers shall be informed of their proposed and ongoing treatment, including participation in their treatment plan (450:15-3-14) and of the reasonable expectations and consequences of his or her following or not following the plan.

(b) Consumers shall be informed of said rights including the right of consumers who are voluntarily admitted to refuse treatment and the qualified right of involuntary consumers to refuse treatment, which shall be noted in the consumer's record.

(c) Consumers shall be informed of the benefits, risks (including side effects, both long and short term) of medications prescribed.

(d) In the presence of a significant change in the consumer's condition which creates an emergency condition and danger to the consumer or to others, the attending physician may order necessary treatment for the consumer without obtaining informed consent. The circumstances constituting the emergency condition shall be documented in the consumer's medical record.

450:15-3-18. Right to consultant opinions

(a) Every consumer has the right to request the opinion of an outside medical or psychiatric consultant at his or her own expense and the facility shall not impede access between the consultant and the consumer.

(b) Every consumer shall have a right to an internal consultation upon request, at no expense. The second opinion shall become part of the clinical record.

(c) The clinical director shall review the second opinion as well as the treatment team's opinion and shall document decision.

450:15-3-19. Right to access additional information

Each consumer shall be informed of the following:

(1) Present and future use and disposition of products of special observation and audiovisual techniques such as tape recorders, television, movies and photographs in which he or she voluntarily participated;

(2) The right to refuse to participate in any research project;

(3) The costs, itemized when possible, of services rendered to the consumer, the source of the facility's reimbursement and any limitation placed on duration of services;

(4) Right to access and view all information held by ODMHSAS and which is subject to the Open Records Act.

450:15-3-20. Rights regarding release of consumer related information either contained in the medical record or otherwise held by the facility [REVOKED]

450:15-3-20.1. Consumer rights regarding confidentiality of mental health and drug or alcohol abuse treatment information

(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless an exception under state or federal law applies. The information available to persons or agencies actively engaged in the treatment of the consumer shall be limited to the minimum amount of information necessary for the person or agency to carry out its function or the purpose for the release. Nothing in this section shall prohibit disclosure of information as required in 22 O.S. § 1175.

(b) A consumer or his or her legally authorized representative shall have the right to request access to the consumer's own mental health and drug or alcohol abuse treatment information as provided for in 450:15-3-60.

(c) Unless an exception applies, all facilities operated by ODMHSAS will provide consumers with a copy of the ODMHSAS Notice of Privacy Practices.

450:15-3-21. Rights regarding labor by consumers

(a) A consumer may perform labor which contributes to the operations and maintenance of the facility for which the facility would otherwise employ an individual under the following conditions:

- (1) The consumer voluntarily agrees to perform the labor;
- (2) Engaging in the labor would not be inconsistent with the consumer's treatment plan;
- (3) The amount of time or effort necessary to perform the labor would not be excessive as determined by and outlined in the treatment plan;
- (4) The consumer is compensated appropriately and in accordance with the applicable federal and state minimum wage laws; and
- (5) Discharge and privileges are not conditioned upon the performance of such labor.

(b) The provisions of this section shall not apply to bonafide "work therapy" which is part of the consumer's treatment plan. Work therapy shall be:

- (1) in the best interest of the consumer;
 - (2) therapeutic in nature and purpose;
 - (3) part of the consumer's documented treatment plan;
 - (4) documented in the consumer's medical record with a rationale for the work therapy;
 - (5) voluntarily entered into by the consumer;
 - (6) compensated by the facility at a rate derived from the value of the work performed;
- and

(7) compensated in accordance with federal and state minimum wage laws if the primary benefit is to the facility.

(c) Subsections (a) and (b) of this section shall not apply to matters of personal housekeeping, personal maintenance, communal living or tasks oriented to improving life skills. These activities shall not primarily benefit the facility.

(d) Payment pursuant to this section shall not be applied by the facility to offset the costs of maintenance of persons receiving treatment in the facility, unless the consumer authorized such payment or offset in writing.

450:15-3-22. Rights regarding consumer government

(a) Consumers are entitled, and should be encouraged to, establish a consumer committee(s), or consumer government(s), by unit or facility.

(b) The committee(s) established by consumers may establish their own rules regarding frequency of meetings, election of officers, and other rules governing the activities of the consumer government.

(c) Staff shall not censor, impede or otherwise attempt to coerce or control consumer government committees.

(d) Staff shall assist consumers in establishing such a government, if they so desire, and allow a consumer representative, chosen by said group, to bring consumer views to staff meetings. The facility shall keep a record of the opinions or concerns expressed by the consumers' government at the facility.

450:15-3-23. Right to assert grievances [REVOKED]

450:15-3-24. Right to competence examination and statement [REVOKED]

450:15-3-25. Right to information and services to be provided consumers being discharged

(a) All consumers shall be involved in their discharge planning and plan except when the consumer is returning to a correctional facility. In addition, with the exception noted above and with the permission of the consumer, the consumer's family or designated friend(s) shall be encouraged to be involved in the discharge planning and afforded such involvement.

(b) No consumer, except when the consumer is discharged to a correctional facility, shall be discharged without:

(1) Sufficient medications to enable the consumer to continue the course of medication prescribed until an initial outpatient appointment pursuant to 43A O.S. § 7-102 (B);

(2) A referral and appointment, in writing, with a community-based facility for aftercare and followup, if consumer accepts such referral;

(3) Clothing suitable to the season and weather;

(4) Presence, or provision for, transportation to the place to which consumer has been discharged; and

(5) All the consumer's funds being returned to the consumer.

(c) Consumers may refuse any or all of (b) of this Section. For consumers released by the court, at a hearing for commitment it may not be possible to provide all of the requirements

specified in this section. Such situations must be documented in the consumer's clinical record.

(d) As a part of the regular discharge planning procedure, consumers likely to be in need of public assistance after their discharge from the facility, shall be assisted in meeting with the local County Department of Human Services worker and in making application for any benefits for which they may be eligible.

450:15-3-26. Right to freedom from retaliation [REVOKED]

450:15-3-27. Synopsis of inpatient mental health bill of rights

(a) The synopsis in (b) of this Section shall be used when an abbreviated format of 450:15-3-4 through 450:15-3-26 is used to supply a consumer or others with an overview of the bill of rights. A copy of the synopsis shall be prominently posted in each consumer treatment unit and in consumer admissions, visiting and public areas.

(b) All facilities operated by, certified by, and under contract with ODMHSAS shall support and protect the fundamental human, civil, and constitutional rights of the individual consumer. Each consumer has the right to be treated with respect and dignity and will be provided the synopsis of the Bill of Rights as listed below.

(1) Each consumer shall retain all rights, benefits, and privileges guaranteed by law except those lost through due process of law.

(2) Each consumer has the right to receive services suited to his or her condition in a safe, sanitary environment regardless of race, religion, sex, ethnicity, age, degree of disability, handicapping condition.

(3) Each consumer, on admission, shall have the absolute right to private uncensored communication with a relative, friend, clergy, or attorney by phone or mail, at the facility's expense if the consumer is indigent.

(4) Consumers retain the right of confidential communication with their attorney, personal physician, or clergy.

(5) Every consumer is entitled to uncensored private communication (letter, telephone, personal visits); such letters or copies of letters shall not be kept in consumer treatment records.

(6) No consumer shall be neglected or sexually, physically, verbally, or otherwise abused.

(7) Each consumer shall receive treatment in the least restrictive environment and have the maximum freedom of movement consistent with his or her clinical condition and legal status.

(8) Each consumer shall have easy access to his or her personal funds deposited with the finance office, and shall be entitled to an accounting. A limitation on access to funds may be made when it is determined by the facility's director to be necessary and essential to prevent the consumer from unreasonably and significantly dissipating his or her assets.

(9) Consumers may have their own clothing and other personal possessions. This right can be forfeited if the property is potentially dangerous to the consumer, others, or if the property is functionally unsafe.

(10) Each consumer shall have the right to practice his or her religious belief and be accorded the opportunity for religious worship. No consumer shall be coerced into engaging in or refraining from any religious activity, practice, or belief.

(11) Consumers legally entitled to vote shall be assisted to register and vote when they so request.

(12) Each consumer shall be provided with prompt, competent, and appropriate treatment; and an individualized treatment plan. A consumer shall participate in his or her treatment programs and may consent or refuse to consent to the proposed treatment. The right to consent or refuse to consent may be abridged for those consumers adjudged incompetent by a court of competent jurisdiction and in emergency situations as defined by law. If the consumer permits, family shall be involved.

(13) Every consumer's record shall be treated in a confidential manner.

(14) No consumer shall be required to participate in any research project or medical experiment without his or her informed consent as defined by law. Refusal to participate shall not affect the services available to the consumer.

(15) A consumer may voluntarily participate in work therapy and must be paid fair compensation. However, each consumer is responsible for personal housekeeping tasks without compensation.

(16) A consumer shall have the right to assert grievances with respect to an alleged infringement on his or her rights.

(17) Consumer shall be permitted to establish and participate in a consumer committee or consumer government by unit or facility wide.

(18) A consumer being discharged shall have plans for outpatient treatment, sufficient medication, suitable clothing for the season, housing information and referral, and if consumer permits, family involvement in the plan.

(19) Each consumer has the right to request the opinion of an outside medical or psychiatric consultant at his or her own expense or a right to an internal consultation upon request at no expense.

(20) No consumer shall be retaliated against or subjected to any adverse change of conditions or treatment solely or partially because of his or her having asserted his or her rights.

PART 3. INPATIENT MENTAL HEALTH GRIEVANCE PROCEDURE

450:15-3-35. Applicability

This Part is applicable to those facilities operated by, certified by, or under contract with, or subcontracting through a facility which is under contract with ODMHSAS, the Oklahoma Department of Mental Health and Substance Abuse Services pursuant to 43A O.S. § 2-102, et seq and which provide inpatient or residential services.

450:15-3-36. Policy, procedures and provisions for grievances, ODMHSAS operated facilities [REVOKED]

450:15-3-37. Response to documented emergency/treatment decision [REVOKED]

450:15-3-38. Treatment team [REVOKED]

450:15-3-39. Administrative review [REVOKED]

450:15-3-40. Hearing board [REVOKED]

450:15-3-41. Appeal [REVOKED]

450:15-3-42. Responsibility of Patient Advocate Office [REVOKED]

450:15-3-43. Grievance Hearing ODMHSAS operated facilities [REVOKED]

450:15-3-44. Appeals [REVOKED]

450:15-3-45. Grievance procedures and policy, facilities under contract with ODMHSAS

Facilities either under contract with ODMHSAS, or subcontracting through a facility which is under contract with ODMHSAS, for the provision of inpatient services shall have a written grievance policy that includes:

- (1) A written notice of the grievance procedure is provided to each consumer or guardian and, if involved with the consumer, to family member(s) or significant other(s).
- (2) Time frames for the grievance procedures which allow for a resolution within fourteen (14) days.
- (3) Procedure for providing written notification to the consumer advising that he or she has the right to make a complaint to the ODMHSAS Consumer Advocacy Division.
- (4) Name(s) of the individual(s) who are responsible for coordinating the 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) A mechanism to monitor the grievance process and improve performance based on outcomes.
- (6) An annual review of the grievance policy and procedure.

PART 5. DEPARTMENT APPROVED SYNOPSIS DOMESTIC VIOLENCE/SEXUAL ASSAULT SHELTER RESIDENTS' BILL OF RIGHTS [REVOKED]

450:15-3-52. Applicability [REVOKED]

450:15-3-53. Domestic violence/sexual assault shelter residents' general rights statement [REVOKED]

PART 7. CONSUMER ACCESS TO HEALTH INFORMATION

450:15-3-60. Right to access designated record set from facilities operated by ODMHSAS

- (a) A consumer has a right to access his or her health information in the designated record set from facilities operated by ODMHSAS.
- (b) The process for requesting access to read or request copies of the designated record set from ODMHSAS facilities is as follows:
 - (1) The consumer shall obtain a Consent for Release of Confidential Information form from the facility's health information department, complete it and submit it to the facility's health information department director or designee. If the consumer requests a copy from the designated record set, the facility may charge the consumer a fee of twenty-five cents (\$0.25) per page for copying the information and the actual mailing expenses when applicable.
 - (2) If the facility does not possess the information the consumer requests but knows where it is maintained, the health information department shall inform the consumer where to direct the request.
 - (3) The health information department shall coordinate the request for access to the designated record set with the person in charge of the care and treatment of the consumer.

450:15-3-61. Denial of access to the designated record set from facilities operated by ODMHSAS

- (a) ODMHSAS may deny, in whole or in part, the designated record set under certain conditions. Some denials provide the consumer with a right to a review of the denial while others do not.
- (b) The consumer does not have a right of review for a denial of access if the denial is made on the following bases:
 - (1) If the facility is a correctional institution or acting under the direction of a correctional institution, and access to a copy of the information in the designated record set would jeopardize the health, safety, security, custody or rehabilitation of the consumer or other inmates, or the safety of any officer, employee or other person at the correctional institution or responsible for the transporting of the consumer.
 - (2) The information in the designated record set was obtained by the facility in the course of research that includes treatment of the research participants, while such research is in progress, provided the consumer has agreed to the denial of access in conjunction with the consumer's consent to participate in the research and the facility has informed the consumer the right of access will be reinstated upon completion of the research.
 - (3) The information in the designated record set was obtained under a promise of confidentiality from someone other than a health care provider and such access would be reasonably likely to reveal the source of the information.
- (c) The consumer has a right of review for a denial of access if the denial is made on the following bases:

- (1) A licensed mental health professional has determined, in the exercise of professional judgment, that access to the designated record set by the consumer is reasonably likely to endanger the life or physical safety of the consumer or another person;
 - (2) The requested designated record set makes reference to another person unless such other person is a health care provider and a licensed mental health professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or
 - (3) The request for access is made by the consumer's personal representative and a licensed mental health professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the consumer or another person.
- (d) In lieu of providing access to the designated record set, the facility may provide the consumer with a summary of the requested information, if the consumer agrees in advance to such a summary.

450:15-3-62. ODMHSAS action on consumer's request for access to the designated record set from facilities operated by ODMHSAS

- (a) ODMHSAS shall act on the request for access to the designated record set within the following time periods:
- (1) If the requested information from the designated record set is readily available, the health information department shall within thirty (30) days of the receipt of the request inform the consumer of the approval or denial of the request and if approved provide the access to the designated record set; or
 - (2) If the requested information is not stored on the facility premises, the health information department shall within sixty (60) days from receipt of request inform the consumer of the approval or denial of the request and if approved provide the access to the designated record set.
- (b) If the health information department is unable to provide response within these timeframes, it shall send a letter to the consumer, which shall inform the consumer of the delay and state the date by which a response to the request will be provided. The deadline can be extended for no more than 30 additional days and the facility may extend the deadline once per request for access.
- (c) If a decision is made to deny the request for access, the health information department of the facility shall send the consumer a letter stating the basis of the denial and, if applicable, providing a statement of the consumer's right for review of the denial and how to exercise such review rights. The letter must also include a description of how the consumer may complain to the ODMHSAS Office of Consumer Advocacy or to the U.S. Secretary of the Department of Health and Human Services. The description must also include the name, or title, and telephone number of the Office of Consumer Advocacy.

450:15-3-63. Consumer's request for review of denial of access to the designated record set from facilities operated by ODMHSAS

(a) If a facility denies a request for access to the designated record set on the basis of one of the grounds for denial for which review is available, the consumer may initiate the review process by making a request for review of the denial in writing and submitting it to the ODMHSAS Privacy Officer at 1200 N.E. 13th Street, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

(b) The ODMHSAS Privacy Officer or designee shall select a licensed mental health professional, who did not participate in the original decision to deny access, to review the denial. This reviewer will complete the review within a reasonable period of time and forward his or her findings to the ODMHSAS Privacy Officer or designee. The reviewer's decision is final.

(c) The Privacy Officer shall promptly inform the consumer by letter of the outcome of the review.

- (1) If a decision is made to grant access, the letter will explain the process to fulfill the request for access.
- (2) If a decision is made to uphold the denial of access, the letter shall state the reasons for denial.

450:15-3-64. Right to request amendment of designated record set from facilities operated by ODMHSAS

Except as provided herein, a consumer has a right to request an amendment of his or her health information in the designated record set from facilities operated by ODMHSAS for as long as the facility maintains the information.

- (1) A consumer shall request the amendment in writing to the health information department of the facility and provide a reason to support the requested amendment.
- (2) The facility shall have sixty (60) days to act on the request to amend the information, unless the facility sends the consumer a letter within the initial sixty (60) day period stating the time period will be extended up to an additional thirty (30) days, explaining the need and reasons for delay and providing a date by which the consumer can expect a decision.
- (3) If the facility agrees to the requested amendment, in whole or in part, it must:
 - (A) Make the amendment by, at minimum, identifying the affected records and appending or otherwise providing a link to the location of the amendment;
 - (B) Timely inform the consumer the amendment is accepted;
 - (C) Obtain the consumer's agreement to have the facility with which the amendment needs to be shared. Relevant persons include:
 - (i) Persons identified by the consumer as needing the amendment;
 - (ii) Persons the facility identifies as having relied or could foresee ably rely on the unamended information previously provided to them.
 - (D) Make reasonable efforts to inform and timely provide the amendment to those persons.
- (4) The facility may deny a request for amendment if it determines that one of the following reasons exists:

- (A) The information that is the subject of the request was not created by the facility, unless the consumer can provide a reasonable basis to believe that the originator of the information is no longer available to act on the requested amendment.
 - (B) The information that is the subject of the request is not part of the designated record set;
 - (C) The information that is the subject of the request is accurate and complete.
- (5) If the facility denies the amendment, in whole or part, it must:
- (A) Provide the consumer with a timely denial, written in plain language and including:
 - (i) The basis for denial;
 - (ii) Notice of the consumer's right to submit a written statement of disagreement; and instructions on how to file the statement;
 - (iii) A statement that if the consumer does not submit a statement of disagreement, the consumer may request the facility provide the consumer's request for amendment and the denial with any future disclosures of the designated record set; and
 - (iv) Notice that the consumer may complain about the decision to the ODMHSAS Office of Consumer Advocacy or to the U.S. Secretary of the Department of Health and Human Services;
 - (B) Permit the consumer to submit a one (1) page statement of disagreement;
 - (C) Provide a copy of any rebuttal prepared to the consumer;
 - (D) As appropriate, identify the part of the record subject to the disputed amendment and append or otherwise link the request, the denial, and any statement of disagreement or rebuttal to the record;
 - (E) For future disclosures of the designated record set, include any statement of disagreement or, in response to the consumer's request, the amendment request and the denial (or an accurate summary of either of the foregoing).
- (6) If the facility is informed by a healthcare provider or health plan, such as an insurance company, about an amendment to a consumer's information in the designated record set, the facility must amend the information in its record by, at a minimum, identifying the affected records and appending or otherwise providing a link to the location of the amendment.
- (7) The facility must document the titles of the persons or offices responsible for receiving and processing requests for amendments and maintain the list for a period of six (6) years.

450:15-3-65. Right to request confidential communications from facilities operated by ODMHSAS

- (a) Facilities operated by ODMHSAS shall accommodate reasonable requests by a consumer to receive confidential communications from the facility by alternative means or at alternative locations.
- (b) Alternative means may include contacting the consumer by telephone.
- (c) Alternative locations may include an alternative address other than the consumer's home address.
- (d) To request alternative communications, the consumer must provide the facility with the request in writing and specify the alternative means or location.

450:15-3-66. Right to an accounting of disclosures from facilities operated by ODMHSAS

Facilities operated by ODMHSAS must provide to consumers upon request an accounting of disclosures of health information in the designated record set as provided below:

- (1) The consumer must make a written request to the facility's health information department director or ODMHSAS Privacy Officer.
- (2) The facility must provide an accounting of disclosures made of the consumer's designated record set during a time period specified up to six (6) years prior to the date of the request for an accounting except for disclosures:
 - (A) To carry out treatment, payment or health care operations as permitted under law;
 - (B) To the consumer about his or her own information;
 - (C) Authorized by the consumer;
 - (D) To persons involved in the consumer's care or other notification purposes permitted under law;
 - (E) For national security or intelligence purposes;
 - (F) To corrections officials or law enforcement officials as permitted under law; or
 - (G) That are a part of a limited data set;
 - (H) That are merely incidental to another permissible use or disclosure;
 - (I) Which were made before April 14, 2003;
 - (J) In certain circumstances involving health oversight, a facility may temporarily suspend the consumer's right to receive an accounting of disclosures.
- (3) The accounting for disclosure must contain the following information for each disclosure:
 - (A) Date of disclosure;
 - (B) Name of entity or person who received the information, and, if known, the address of such entity or person;
 - (C) A brief description of the information from the designated record set disclosed; and
 - (D) The purpose for which the disclosure was made;
- (4) If during the time period for the accounting, multiple disclosures have been made to the same person or entity for a single purpose, or pursuant to a single authorization, the accounting may provide information as set forth above for the first disclosure, and then summarize the frequency, periodicity, or number of disclosures made during the accounting period and the date of the last such disclosure during the accounting period.
- (5) The facility shall have sixty (60) days to act on the request for accounting of disclosures, unless the facility sends the consumer a letter within the initial sixty (60) day period extending the period for no more than an additional thirty (30) days. The letter shall explain the reasons for delay and the date on which the accounting will be provided.
- (6) The first accounting in any twelve (12) month period must be provided to the consumer without charge. A reasonable, cost-based fee may be charged for additional accountings within the twelve (12) month period, provided the consumer is informed in advance of the fee, and is permitted an opportunity to withdraw or amend the request.
- (7) The facility must document the following:

- (A) All information required to be included in an accounting of disclosures of information from the designated record set;
- (B) All written accountings provided to consumers, and;
- (C) Titles of persons or offices responsible for receiving and processing requests for an accounting from consumers.

SUBCHAPTER 5. EMPLOYEE RESPONSIBILITIES [REVOKED]

**PART 1. OKLAHOMA DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE
ABUSE CONDUCT REVIEW COMMITTEE [REVOKED]**

450:15-5-1. Applicability [REVOKED]

450:15-5-2. Inappropriate conduct [REVOKED]

450:15-5-3. Conduct Review Committee [REVOKED]

450:15-5-4. Committee membership [REVOKED]

450:15-5-5. Authority and duties [REVOKED]

450:15-5-6. Committee procedures [REVOKED]

450:15-5-7. Reporting procedures [REVOKED]

PART 3. MENTAL HEALTH PROFESSIONAL'S DUTY TO PROTECT [REVOKED]

450:15-5-17. Applicability [REVOKED]

450:15-5-18. Responsibility of mental health professionals [REVOKED]

SUBCHAPTER 7. OFFICE OF CONSUMER ADVOCACY

PART 1. DUTIES

450:15-7-1. Applicability

This Subchapter is applicable to all facilities operated by, certified by, or under contract with ODMHSAS.

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

(a) The Office of Consumer Advocacy is authorized by 43A O.S. § 2-108 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.

(b) The Office of Consumer Advocacy shall conduct investigations into allegations of physical abuse, neglect, exploitation, mistreatment, sexual abuse and other consumer rights violations.

(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:

(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 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.

(6) To access the 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 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.

(8) Make recommendations to Commissioner and provide regular or special reports regarding investigations and unresolved grievances to the Commissioner and Board.

(9) To perform other duties as assigned by the Board.

450:15-7-4. ODMHSAS facility advocacy

The Advocate General shall assign an Advocate to monitor and investigate allegations of abuse, neglect, mistreatment or rights violations at each facility operated by, certified by or under contract with the ODMHSAS.

PART 2. INVESTIGATIONS

450:15-7-5. Advocacy Division investigation protocols [REVOKED]

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. 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 to call the Office of Consumer Advocacy at 1-888-699-6605.

(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 in Norman, Oklahoma by telephone (1-405-573-6605 or 1-888-699-6605) between 8:00 a.m. and 5:00 p.m. on normal business days. Reports may also be made by faxing a critical incident report to 1-405-573-6647.

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

(a) Immediate protection for safety, health, and welfare. If the Office of Consumer Advocacy 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 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

The Office of Consumer Advocacy 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 shall conduct a prompt investigation of the allegation. The Advocate shall contact the applicable facility executive director to arrange for document production, site visits and interviews.

(b) The applicable facility executive director shall arrange for the Advocate 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 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.

(c) 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 allegation; or
- (3) Denial of Advocate access to clients, employees, facilities, witnesses, records or evidence.

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

During the investigation process, an individual accused 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 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 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 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.

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.

(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.

(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 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.

450:15-7-13. Document collection and review

The investigator shall gather and review relevant documents including, but not limited to:

- (1) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;
- (2) psychiatric and medical records;
- (3) photos; and
- (4) facility or provider logs, activity and tracking documents.

450:15-7-14. Investigative interviews

The Advocate shall interview or attempt to interview persons known or identified to have information about the allegation. If an injury is alleged, the Advocate or other appropriate person shall observe and note apparent injuries, and obtain pertinent medical documentation, including photographic evidence. 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.

(1) The Office of Consumer Advocacy Advocate 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 tape record interviews. Tape recordings of interviews remain with the Office of Consumer Advocacy investigative file. Office of Consumer Advocacy files and tape recordings are not public documents due to the confidential and privileged information contained in the interviews.

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

(4) The Advocate 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 shall provide the individual an opportunity to respond to the allegation(s). Following the initial interview, if the Advocate obtains information to which the accused individual did not have an opportunity to respond, the Advocate shall conduct another interview with the individual. The Advocate 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 to interview a person who is deaf, hard of hearing, or is non-English speaking, 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 shall contact by phone or regular mail the executive director of the facility or provider that employs the accused individual. If a reasonable time has passed without being able to schedule an interview, the Advocate shall contact the executive director of the facility 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 shall follow the same.

(8) If a person fails to appear for a scheduled interview without good cause, the Advocate 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 shall prepare a written investigative report minimally containing:

(1) The allegation(s) made to the Office of Consumer Advocacy, 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) "**Substantiated**" which means the available evidence establishes that it is more likely than not that the alleged maltreatment occurred;
 - (2) "**Unsubstantiated**" which means the available evidence established that it is unlikely that the alleged maltreatment occurred; or
 - (3) "**Unable to substantiate**" which means the available evidence was not sufficient to establish whether or not the alleged maltreatment 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 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 43 A 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 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 shall provide results of investigations as follows:
- (1) A copy of the final Office of Consumer Advocacy investigation report shall be sent to the executive director of a ODMHSAS operated facility.
 - (2) A summary of the allegation and finding shall be sent to the executive director of a state certified or contract facility.
 - (3) When an executive director is named as an individual accused of maltreatment of a consumer in the allegation, the Office of Consumer Advocacy 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 Provider Certification 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 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 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.

SUBCHAPTER 9. CONSUMER RIGHTS, NON-INPATIENT SERVICES

450:15-9-1. Applicability

This subchapter is applicable to all facilities operated by, certified by, or under contract with, ODMHSAS as a community mental health center, approved treatment facility for substance abuse services, or domestic violence, sexual assault program or batterers' program or community-based structured crisis center, or residential care facility.

450:15-9-2. Community mental health centers

The rights for consumers of community mental health centers are set forth in OAC 450:17-11-1 and 450:17-11-2.

450:15-9-3. Substance abuse services

The rights for consumers of substance abuse services are set forth in OAC 450:18-11-1 and 450:18-11-2.

450:15-9-4. Residential care facilities

The rights for consumers of residential care facilities are set forth in OAC 450:16-15-1 through 450:16-15-4.

450:15-9-5. Domestic violence and sexual assault services

The rights for consumers of domestic violence and sexual assault services are set forth in OAC 450:19-11-1 and 450:19-11-2.

450:15-9-6. Advocate general [REVOKED]

450:15-9-7. Community-Based Structured Crisis Centers

The rights for consumers of community-based structured crisis centers are set forth in OAC 450:23-9-1 through OAC 450:23-9-2.