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, 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. Definitions

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

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

(A) non-accidental physical injury or mental anguish;

(B) sexual abuse;

(C) sexual exploitation;

(D) use of mechanical restraints without proper authority;

(E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the consumer; or

(F) deprivation of food, clothing, shelter, or healthcare by staff responsible for providing these services to a consumer.

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

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

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

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

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

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

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house or residential community program operated by,

or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

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

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

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

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

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

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

(ii) Information compiled in anticipation of litigation.

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

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

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

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

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

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

(A) a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology;

(B) a 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.

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

"Neglect" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Sexual abuse" includes:

(A) rape, incest, or lewd and indecent acts or proposals, as defined by state law, by staff;

(B) oral, anal or vaginal penetration of a consumer by staff;

(C) the anal or vaginal penetration of a consumer by staff with any other object; or

(D) for the purpose of sexual gratification, the touch, feeling or observation of the body or private parts of a consumer by staff; or

(E) indecent exposure by staff providing services to the consumer.

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

(A) staff allowing, permitting or encouraging a consumer to engage in sexual acts with others or prostitution, as defined by state law, which results in harm to a consumer; or

(B) staff allowing, permitting, encouraging, or engaging in the lewd, obscene or pornographic photographing, filming or depicting of a consumer in those acts as defined by state law.

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

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

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

SUBCHAPTER 3. CONSUMER RIGHTS

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

450:15-3-1. Applicability

This Part is applicable to all facilities and programs providing mental health and drug or alcohol abuse services either operated by, certified by, or under contract with, ODMHSAS or subcontracting through a facility which is under contract with ODMHSAS.

450:15-3-2. General rights statement

(a) Consumers of mental health or drug or alcohol abuse services 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) Each consumer has the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect.

(c) Each consumer has the right to a safe, sanitary, and humane living environment.

(d) Each consumer has the right to a humane psychological environment protecting them from harm, abuse, and neglect.

(e) Each consumer has the right to services suited to his or her conditions and needs for treatment without regard to his or her race, religion, gender, sexual orientation ethnic origin, age, degree of disability, handicapping condition, legal status.

(f) In addition to the rights described in (a) through (d) of this Section, all persons receiving mental health or drug or alcohol abuse services shall have the rights guaranteed by this Part, referred to as the Mental Health and Drug or Alcohol Abuse Services 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 Bill of Rights

(a) Each consumer, upon admission to a facility or program, 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 Mental Health and Drug or Alcohol Abuse Services Bill of Rights, OAC 450:15-3-6 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 Mental Health and Drug or Alcohol Abuse Services 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 Mental Health and Drug or Alcohol Abuse Services Bill of Rights, in a conspicuous place in 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 Mental Health and Drug or Alcohol Abuse Services Bill of Rights. Every consumer shall be notified of facility and unit procedures with which he or she is expected to comply, and consequences for non-compliance.
(d) Employees and volunteers shall be oriented regarding consumers' rights and the constraints of this Part.

450:15-3-6. Right to communication

(a) Every consumer shall be allowed to contact one individual immediately upon entry into such place of detention or admission for purposes of notification of the consumer's location (43A O.S. § 5-201).
(b) Every consumer is entitled to communicate by uncensored, sealed mail.
(1) Each program shall provide writing materials and reasonable amounts of postage to ensure correspondence can be written and mailed for those consumers who cannot procure the same.
(2) The facility director may establish procedure regarding the mailing, delivery and opening of consumer mail if determined necessary for security or safety precautions. A consumer's correspondence may be restricted as determined by the treatment team. Either occurrence shall be documented in the consumer's record.
(3) No correspondence shall be placed in the consumer's record or any program record without the written consent of the consumer.
(c) Every consumer is entitled to unimpeded, private and uncensored communication by telephone and by personal visit with persons of his or her choice.
(1) Each program shall make telephones readily available within the facility to ensure calls can be conveniently made and received.
(2) Each program shall establish in writing reasonable times and places for the use of telephones and for visitation and communicate such to consumers and the consumer's family or friends. Each program shall post hours for visitation. Requests for telephone usage or visitation outside the established hours shall be addressed on an individual basis by the consumer's treatment team.
(3) Telephone usage and visitation may be limited as determined by the treatment team for a therapeutic reason and documented in the consumer’s record. Limitations shall be reviewed at each treatment team meeting and shall not continue longer than therapeutically necessary. Limitations shall not be for punitive reason.

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

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

(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) Each consumer has the right to be treated in the least restrictive environment based on his or her clinical condition and legal status. The consumer's movement shall not be restricted more than is necessary to provide treatment services, to prevent injury to the consumer or others, or prevent substantial property damage.

(b) The right to treatment in the least restrictive environment shall not be withdrawn to punish or discipline a consumer, or for the convenience of staff or the facility.

(c) Restriction of this right shall be decided by the treatment team, documented in the consumer's record, and shall be reviewed at the request of the consumer.

(d) Seclusion and restraint may be administered to a non-consenting consumer upon the written order of a physician who has personally examined the consumer and who finds seclusion or restraint is necessary to protect the consumer or other persons. The physician shall document an explanation of the decision to administer seclusion and restraint in the consumer's record. This shall not prohibit emergency seclusion and restraint pending notification of a physician

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

(a) A consumer has the right of access to his or her money that is deposited in the consumer's personal account at the facility.

(b) 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.

(c) 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 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.

(d) 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.

(e) 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.

(f) 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, except as limited in this section. The facility director may prohibit certain kinds of personal property. Exclusions shall be documented in the consumer's record and the consumer and his or her family shall be provided a written list of prohibited personal property upon admission. Access to specific personal property may be limited:

(1) to prevent theft, loss or destruction of property;

(2) to prevent the consumer from physically harming him or herself or others;

(3) 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 treatment team 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 treatment

(a) Each consumer shall be provided with prompt, competent and appropriate individualized treatment that offers the consumer a realistic prospect of improvement. Consumers who have problems in multiple domains shall be provided with appropriately integrated attention to all of their needs within the context of the treatment program. Each consumer 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) Each consumer or his or her legal guardian shall have the opportunity to be involved in the consumer's treatment. An individual of the consumer's choice shall have the opportunity to be involved in the consumer’s treatment with the consent of the consumer.

(c) Each consumer 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.

(d) If the consumer is involuntarily committed, consideration shall also be given to whether the conditions that resulted in the consumer's commitment still exist.

(e) Each consumer shall be informed of his or her proposed and ongoing treatment, including participation in his or her treatment plan and of the reasonable expectations and consequences of his or her following or not following the plan.

(f) Each consumer who has a co-occurring disorder shall receive services for those disorders. No program shall deny services to a consumer for any disorder solely because that consumer is displaying symptoms of, or receiving treatment for a co-occurring disorder of another type.

(g) Each consumer is entitled to receive a thorough treatment plan update to determine the value and appropriateness of the present care and treatment being received, and the necessity of continuing the consumer's care in the facility rather than in a less restrictive environment outside the facility.

(h) Each consumer shall be informed of said rights including the right of each consumer voluntarily admitted to refuse treatment and the qualified right of an involuntary consumer to refuse treatment, which shall be noted in the consumer's record.

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

(j) 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 record.

(k) Each consumer has the right to know why services are refused and the program shall provide a written explanation concerning the reason he or she was refused certain services.

(l) Each consumer shall not be subject to unnecessary, inappropriate or unsafe termination from treatment. Discharge shall not take place as punishment for displaying

symptoms of the consumer's disorder.

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

(a) During the detention periods authorized by 43A O.S. § 5-204 or during the time set forth for emergency examination, appropriate treatment and medication including psychotropic medications, may be administered to a consenting individual.

(b) 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.

(c) Treatment and medication may be administered to a non-consenting individual under the following conditions pursuant to43A 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.

(d) Seclusion and restraint may be administered to a non-consenting individual under the following conditions pursuant to 43A O.S. § 5-205:

(1) Upon the written order of a physician who has personally examined the consumer;

(2) Who finds that seclusion or restraint is necessary to protect the consumer, the facility, or other persons.

(3) 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.

(e) 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.

450:15-3-18. 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 consumer record.

(c) The facility's medical 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.

450:15-3-20.1. 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 all 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 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) The consumer is provided training appropriate to the labor to be performed.

(d) Subsections (a), (b) and (c) 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.

(e) 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.

450:15-3-23.1 Right to assert grievances

(a) A consumer shall have a right to assert grievances with respect to an alleged infringement of his or her rights and shall have the right to have such grievances considered through a fair, timely and impartial grievance procedure.

(b) No consumer shall be retaliated against, coerced, or treatment altered either solely or partially because of his or her having asserted, a grievance regarding his or her rights.

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

(a) Each consumer shall be involved in his or her discharge planning. With the permission of the consumer, an individual of his or her choice shall be encouraged to be involved in the consumer's 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.

450:15-3-27. *Synopsis* of the bill of rights

(a) The synopsis in (b) of this Section shall be used when an abbreviated format of OAC 450:15-3-6 through 450:15-3-25 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) Facilities with physical custody of a consumer 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 and humane treatment environment regardless of race, religion, gender, ethnicity, age, degree of disability, handicapping condition, or sexual orientation.
(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) Each consumer retains the right of confidential communication with their attorney, personal physician, or clergy.
(5) Each 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) Each consumer may have his or her 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) Each consumer 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 because the consumer asserted his or her rights.

(c) Programs providing treatment or services without the physical custody or detention of consumers 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 and humane treatment environment regardless of race, religion, gender, ethnicity, age, degree of disability, handicapping condition or sexual orientation.

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

(4) 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.

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

(6) 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.

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

(8) 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.

(9) No consumer shall be retaliated against or subjected to any adverse change of conditions or treatment because the consumer asserted his or her rights.

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

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

(f) The ODMHSAS Office of Consumer Advocacy, in any investigation or monitoring shall have access to consumer, facility or program records and staff as set forth in OAC 450:15-7-3.

450:15-3-28. Right to name a Treatment Advocate

(a) All adult mental health consumers being served by a licensed mental health professional shall be informed by the LMHP or the mental health treatment facility that the consumer has the right to designate a family member or other concerned individual as a treatment advocate. The program shall have written policies and procedures ensuring this provision.

(b) The consumer shall not be coerced, directly or indirectly, into naming or not naming a Treatment Advocate or choice of Treatment Advocate or level of involvement of the Treatment Advocate. Any individual so designated shall at all times act in the best interests of the consumer and comply with all conditions of confidentiality.

(c) No limitation may be imposed on a consumer's right to communicate by phone, mail or visitation with his or her Treatment Advocate, except to the extent that reasonable times and places may be established.

(d) The Treatment Advocate may participate in the treatment planning and discharge planning of the person being served to the extent consented to by the consumer and

permitted by law.
(e) The consumer and Treatment Advocate shall be notified of treatment and discharge planning meetings at least 24 hours in advance.
(f) All LMHPs or mental health treatment facilities shall use a Treatment Advocate Designation form which will minimally include:
(1) the consumer's choice to name or not name a Treatment Advocate;
(2) identify any specifically named person;
(3) indicate the level of involvement the identified Treatment Advocate shall have.
(4) a space where the Treatment Advocate will indicate his or her intention of serving according to the consumer's specifications;
(5) an agreement that the Treatment Advocate will comply with all standards of confidentiality; and
(6) both the signature of the consumer and the Treatment Advocate.
(g) Verbal confirmation of the written information proposed in the form shall be permitted until such time as the Treatment Advocate can be present to sign the designated form.
(h) The consumer may change or revoke the designation of a treatment advocate at any time and for any reason.
(i) A copy of the completed form shall be given to the consumer and the treatment advocate. The original shall be maintained in the consumer's record.
(j) The Treatment Advocate form shall be reviewed with the consumer at each point of treatment planning and treatment planning review to afford the consumer an opportunity for review and amendment.

PART 3. CONSUMER 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.

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

Facilities shall have a written grievance policy that includes:
(1) A written notice of the grievance procedure is provided to each consumer or guardian and, to an individual of the consumer's choice;
(2) Time frames for the grievance procedures which allow for an expedient resolution of consumer grievance(s);
(A) Inpatient and residential programs shall be a seven (7) day timeframe;
(B) Outpatient, intensive outpatient and day treatment programs shall be a fourteen (14) day timeframe;
(C) Crisis stabilization, medical detoxification and social detoxification programs shall have a three (3) day timeframe;
(3) The provision of written notification to the consumer of the grievance outcome and mechanism by which an individual may appeal the outcome;

(4) ODMHSAS-operated facility procedures shall include a process by which the consumer may appeal the grievance outcome to the Consumer Advocacy Division. The Consumer Advocacy Division shall develop procedures for such external appeals;
(5) A procedure for advising the consumer he or she has the right to make a complaint to the ODMHSAS Consumer Advocacy Division and the mechanism for contacting the Consumer Advocacy Division;
(6) Name(s) of the individual(s) responsible for coordinating the program's grievance procedure and the individual responsible for or authorized to make decisions for resolution of the grievance. In the instance where the decision making is the subject of a grievance, decision making authority shall be delegated;
(7) A mechanism to monitor the grievance process and improve performance based on outcomes;
(8) An annual review of the grievance policy and procedure; and
(9) The ongoing monitoring of the grievance process and, based on outcomes, adjust and improve processes.

PART 7. CONSUMER ACCESS TO HEALTH INFORMATION, FACILITIES OPERATED BY ODMHSAS

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.

PART 11. RESIDENT RIGHTS, MENTAL HEALTH RESIDENTIAL CARE FACILITIES

450:15-3-80. Applicability

This Part is applicable to those mental health residential care facilities operated by, certified by, or under contract with the Oklahoma Department of Mental Health and Substance Abuse Services pursuant to 43A O.S. § 3-315, et seq.

450: 15-3-81. Resident rights

(a) Each resident shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged by due process of law by a court of competent jurisdiction. Each facility shall insure each resident has the rights specified as follows.

(1) Each resident has the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.

(2) Each resident has the right to a safe, sanitary, and humane living environment.

(3) Each resident has the right to a humane psychological environment protecting them from harm, abuse, and neglect.

(4) Each resident has the right to an environment which provides reasonable privacy, promotes personal dignity, and provides opportunity for the client to improve his or her functioning.

(5) Each resident has the right to receive services suited to his or her condition and

needs for treatment without regard to his or her race, religion, gender, ethnic origin, age, degree of disability, handicapping condition, legal status, sexual orientation.

(6) Each resident, on admission, has the absolute right to communicate his or her change of address with a relative, friend, clergy, or attorney, by telephone or mail.

(7) Each resident shall have and retain the right to confidential communication with an attorney, personal physician, or clergy.

(8) Each resident has the right to uncensored, private communications including, but not limited to, letters, telephone calls, and personal visits. Copies of any personal letter, sent or received, by a resident shall not be kept in his or her clinical record.

(9) No resident shall ever be neglected or sexually, physically, verbally, or otherwise abused.

(10) Each resident has the right to easy access to his or her personal funds on deposit with the facility, and shall be entitled to an accounting for said funds. A limitation on access to such funds may be made when it is determined, and documented, as essential to prevent the resident from unreasonably and significantly dissipating their assets.

(11) Each resident has the right to have his or her own clothing and personal possessions. This right may be forfeited, or limited, only if the personal property is determined to be potentially dangerous to the client, or others, or if the property is determined to be functionally unsafe.

(12) Each resident shall have the right to practice his or her own religious beliefs, and afforded the opportunity for religious worship. No client shall ever be coerced into engaging in, or refraining from, any personal religious activity, practice, or belief.

(13) The records of each resident shall be treated in a confidential manner.

(14) Each resident has the right to refuse to participate in any research project or medical experiment without informed consent of the resident, as defined by law. A refusal to participate shall not affect the services available to the resident.

(15) A resident may voluntarily participate in work therapy, and shall be paid just compensation for such participation. However, each resident is responsible for personal care and housekeeping tasks without compensation.

(16) The community residential mental health facility shall provide residents who are leaving at the request of the community residential mental health facility all funds and property belonging to him or her at the time of his or her departure.

(17) Each resident shall have the right to establish and to participate in a resident committee or resident government.

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

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

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

(c) Each affected facility shall have written policy and implementing procedures to insure each resident enjoys, and has explained to him or her, these rights; and these rights are

visibly posted in both resident and public areas of the facility.
(d) The ODMHSAS Office of Consumer Advocacy, in any investigation or monitoring shall have access to residents, RCF records and RCF staff as set forth in OAC 450:15-7-3.

450: 15-3-82. Resident right to fee information

To insure that the residents have access to the information pertaining to RCF's fee schedule, each resident shall have access to written information about the RCF's fee schedule. The RCF shall provide a written description of the services provided by the RCF, the rates charged for these services, and items for which a resident may be separately charged to each resident annually or when changes occur. THE RCF shall obtain and document in writing the resident's consent prior to their accrual. This policy shall also be available to those individuals who are seeking service. This information shall be visibly posted.

450: 15-3-83. Resident right to information, refused services

A resident, or potential resident, has the right to know why services are refused; and can expect an explanation concerning the reason he or she was refused certain services.

450: 15-3-84. Resident rights regarding group visitations

(a) Group RCF visitation shall be planned for limited interruption of routine activities, unless the group visitation is the activity. Residents shall have advance notice of visitations and never be referred to by full name without their consent.
(b) Written policies shall be established concerning the protection of resident's rights and privacy during RCF visitation by groups.
(c) Planning shall provide for limited interruption of routine activities. Individual residents shall have advance knowledge of such visitations and shall never be referred to by full name without their consent.

450:15-3-85. Resident grievance policy and procedures

Each RCF shall have a written grievance policy and procedure providing for, but not limited to, the following:

(1) Written notice of the procedure provided to the resident and, if involved with the resident, to family members or significant others.
(2) Time frames for the grievance policy's procedures which allow for resolution within fourteen (14) days.
(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authorized to make decisions for resolution of the grievance. In the instance where the decision maker is the subject of a grievance, decision making authority shall be delegated.
(4) Procedure by which a notice is provided to the resident advising that he or she has a right to make a complaint to the ODMHSAS Office of Consumer Advocacy.
(5) Mechanism to monitor the grievance process and improve performance based on outcomes.
(6) Annual review of the grievance policy and its implementing procedures, with revisions as needed to improve.

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. These investigations may be unannounced and or unscheduled as determined by the Advocate General.

(6) To access and copy necessary records of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department.

Records that are confidential under state and federal law shall be maintained as confidential and not be redisclosed by the Advocate General.
(7) To submit a report of the results of investigations of abuse to the appropriate district attorney, licensing board and, if the individual is a juvenile in the custody of a state agency, submit a report to that state agency.
(8) 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

450:15-7-6. 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 allegations; or

(3) Denial of Advocate access to clients, employees, facilities, witnesses, records or other relevant information.

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.

(4) Refrain from intentionally misdirecting investigator by falsehoods or omissions.

450:15-7-12. Educational employees

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

(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 photographs. An attorney or other representative of the person being interviewed may attend an interview only as a silent observer with prior permission of the Advocate General.

(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) **"Supported"** which means the available information establishes that it is more likely than not that the alleged maltreatment occurred;

(2) **"Unsupported"** which means the available information established that it is unlikely that the alleged maltreatment occurred; or

(3) **"Unable to support"** which means the available information 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 43A O.S. § 1-109(C).

(d) An order of the court authorizing the inspection, release or disclosure of information, records, material and reports related to investigations by the Office of Consumer Advocacy 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 Legal Division of the ODMHSAS.

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

(6) The Department 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.