

## Oklahoma Department of Mental Health and Substance Abuse Services

It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments are directed to the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) administrative rules liaison, Gretchen Geis, at [GGeis@odmhsas.org](mailto:GGeis@odmhsas.org).

### ODMHSAS COMMENT DUE DATE:

The proposed policy is a PERMANENT Rule. This proposal is scheduled to be presented for public comment during a public hearing on February 21, 2014 and to the ODMHSAS Board of Directors for adoption on March 28, 2014.

**Reference #: 01-2014**

### SUMMARY:

Proposed Revisions to Chapter 1 include deleting references to Behavioral Health Rehabilitation Specialists (BHRS) since the provider designation will no longer exist after July 1, 2014, at which point all providers of psychosocial rehabilitation services must be a Licensed Behavioral Health Professional (LBHP) or certified through ODMHSAS as a Behavioral Health Case Manager II (CM II). Other revisions include updates to terminology based on previous rule changes as well as administrative changes to certain provider certification processes.

### LEGAL AUTHORITY

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. §85.9G.

### RULE IMPACT STATEMENT

#### STATE OF OKLAHOMA OKLAHOMA DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

#### A. Brief description of the purpose of the rule:

Proposed Revisions to Chapter 1 include deleting references to Behavioral Health Rehabilitation Specialists (BHRS) since the provider designation will no longer exist after July 1, 2014, at which point all providers of psychosocial rehabilitation services must be a Licensed Behavioral Health Professional (LBHP) or certified through ODMHSAS as a Behavioral Health Case Manager II (CM II). Other revisions include updates to terminology based on previous rule changes as well as administrative changes to certain provider certification processes.

#### B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

Organizations or individuals certified by, under contract with, or subject to certification by ODMHSAS, and the consumers and employees of each.

**C. A description of the classes of persons who will benefit from the proposed rule:**

Organizations or individuals certified by, under contract with, or subject to certification by ODMHSAS, and the consumers and employees of each.

**D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, and a separate justification for each fee change:**

ODMHSAS does not anticipate an economic impact on any affected classes of persons or political subdivisions that meet minimum certification standards as currently required by this Chapter.

**E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenue if it can be projected by the agency:**

ODMHSAS has determined implementation of these rules will benefit those affected parties by clarifying and enhancing certification and contracting processes.

**F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:**

ODMHSAS does not anticipate these rules will have an economic impact upon any political subdivision, or require their cooperation to implement or enforce the proposed rule revision.

**G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:**

ODMHSAS has determined these rule revisions will not have an adverse economic impact on small businesses that meet the minimum certification standards as currently required by this Chapter.

**H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:**

Throughout the year ODMHSAS staff evaluate internal processes and amend those processes and rules according to identified needs. ODMHSAS considers these revisions the least burdensome and intrusive method in streamlining these processes and accomplishing statutory compliance.

**I. A determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk.**

ODMHSAS anticipates these rule revisions will enhance the ability to provide behavioral health treatment by clarifying certification requirements and contracting expectations and ensuring an efficient response to specific treatment issues.

**J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented.**

The proposed amendments are anticipated to refine the certification and/or contracting processes for behavioral health and to establish a means for the Department to quickly respond to consumer treatment issues via certification and/or contracting processes.

K. The date the rule impact statement was prepared and if modified, the date modified:

**RULE TEXT**

**TITLE 450. OKLAHOMA DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES  
CHAPTER 1. ADMINISTRATION**

**SUBCHAPTER 1. GENERAL INFORMATION**

**450:1-1-1.1. Definitions**

The following words or terms, as defined below, when used in Chapters 1, 15, 16, 17, 18, 21, 22, 23, 24, 27, 30, 50, 53, 55, 60, 65 and 70, shall have the following meaning, unless the context clearly indicates otherwise and will prevail in the event there is a conflict with definitions included elsewhere in Chapters 1, 15, 16, 17, 18, 21, 22, 23, 24, 27, 30, 50, 53, 55, 60, 65 and 70:

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

**"AOA"** means American Osteopathic Association.

**"Behavioral Health Aide (BHA)"** means individuals must have completed sixty (60) hours or equivalent of college credit or may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience, and:

(A) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and

(B) must be supervised by a bachelor's level individual with a minimum of two years case management experience or care coordination experience; and

(C) treatment plans must be overseen and approved by a LBHP; and

(D) must function under the general direction of a LBHP and/or systems of care team, with a LBHP available at all times to provide back up, support, and/or consultation.

**~~"Behavioral Health Rehabilitation Specialist (BHRS)"~~**

~~(A) On or after 7/01/13, BHRS must be either a LBHP, CADC or certified as a Case Manager II pursuant to Chapter 50 of Title 450.~~

~~(B) BHRS designations made between July 1, 2010 through June 30, 2013 under the following criteria will continue to be recognized until June 30, 2014:~~

~~(i) Bachelor degree or above, and ODMHSAS training as a Behavioral Health Rehabilitation Specialist; or~~

~~(ii) ODMHSAS letter reflecting that grandfathering application requirements have been met; or~~

~~(iii) CPRP (Certified Psychiatric Rehabilitation Practitioner) credential; or~~

~~(iv) Certification as an Alcohol and Drug Counselor (CADC). CADC's are allowed to provide substance abuse rehabilitative treatment to those with alcohol and/or drug dependencies or addictions as primary or secondary DSM-IV Axis diagnosis.~~

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

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

**"Certification"** means a status which is granted to a person or an entity by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS, and indicates the provider is in compliance with minimum standards as incorporated in OAC 450 to provide a particular service. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

**"Certified Alcohol and Drug Counselor (CADC)"** means Oklahoma certification as an Alcohol and Drug Counselor.

**"Certified Behavioral Health Case Manager" or "CM"** means any person who is certified by the ODMHSAS as a Behavioral Health Case Manager pursuant to Oklahoma Administrative Code, Title 450, Chapter 50.

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

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

**"COA"** means the Council on Accreditation of Services for Families and Children, Inc.

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

**"Employment Consultant (EC)"** means an individual who (i) has a high school diploma or equivalent; and (ii) successful completion of Job Coach training.

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

**"Facilities" or "facility"** means entities as described in 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

**"Family Support and Training Provider (FSP)"** means

(A) have a high school diploma or equivalent;

(B) be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or a minimum of 2 years experience working with children with serious emotional disturbance or be equivalently qualified by education in the human services field or a combination of work experience and education with one year of education substituting for one year of experience (preference is given to parents or care givers of child with SED);

(C) successful completion of Family Support Training according to a curriculum approved by the ODMHSAS;

(D) pass OSBI background check;

(E) treatment plans must be overseen and approved by a LBHP; and

(F) must function under the general direction of a LBHP or systems of care team, with a LBHP available at all times to provide back up, support, and/or consultation.

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

**"Institutional Review Board" or "IRB"** means the ODMHSAS board established in accordance with 45 C.F.R. Part 46 for the purposes expressed in this Chapter.

**"Intensive Case Manager (ICM)"** means an individual who is designated as an ICM and carries a caseload size of not more than twenty-five (25) individuals. They are a LBHP, CADC, or certified as a Behavioral Health Case Manager II, and have:

(A) a minimum of two (2) years Behavioral Health Case Management experience,

- (B) crisis diversion experience, and
- (C) successfully completed ODMHSAS ICM training.

**"IRB approval"** means the determination of the IRB that the research has been reviewed and may be conducted within the constraints set forth by the IRB and by other agency and Federal requirements.

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

**"Licensed Alcohol and Drug Counselor"** or **"LADC"** means any person who is licensed through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

**"Licensed Behavioral Health Professional"** or **"LBHP"** means:

(A) allopathic or osteopathic physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (i) Psychology;
- (ii) Social Work (clinical specialty only);
- (iii) Professional Counselor;
- (iv) Marriage and Family Therapist;
- (v) Behavioral Practitioner; or
- (vi) Alcohol and Drug Counselor;

(C) advanced practice nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided; or

(D) a physician assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or therapy functions.

**"Licensed dietitian"** means a person licensed by the Oklahoma Board of Medical Licensure and Supervision as a dietitian.

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

**"Licensed physician"** means an individual with an M.D. or D.O. degree who is licensed in the state of Oklahoma to practice medicine.

**"Licensed practical nurse"** means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to provide practical nursing services.

**"Minimal risk"** means that the probability and magnitude of harm or discomfort anticipated in the research are not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examination or tests.

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

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

**"Paraprofessional"** means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

**"Peer Recovery Support Specialist"** or **"PRSS"** means an individual certified by ODMHSAS as a Peer Recovery Support Specialist pursuant to requirements found in OAC 450:53.

**"Probationary certification"** means a certification status granted for a period less than three (3) years.

**"Psychiatrist"** means a licensed physician who specialized in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology, or has equivalent training or experience.

~~**"Recovery Support Specialist" or "RSS"** means an individual who has completed the ODMHSAS RSS training (also referred to as Peer Recovery Support Specialist (PRSS) training) and has passed the ODMHSAS RSS exam.~~

**"Registered nurse"** means an individual who is a graduate of an approved school of nursing and is licensed in the state of Oklahoma to practice as a registered nurse.

**"Rehabilitative services"** means face-to-face individual or group services provided by qualified staff to develop skills necessary to perform activities of daily living and successful integration into community life.

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

**"Research"** means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this Chapter, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities.

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

**"Service area"** means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health [43A O.S. § 3-302(1)].

**"Service Provider"** means a person who is allowed to provide substance abuse services within the regulation and scope of their certification level or license.

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

**"Support Services Provider (SSP)"** means an individual age eighteen (18) or older with a high school diploma or equivalent.

**"TJC"** means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

**"Volunteer"** means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

### **SUBCHAPTER 3. CONTRACTS FOR MENTAL HEALTH, SUBSTANCE ABUSE, AND RESIDENTIAL CARE SERVICES**

#### **PART 1. ELIGIBILITY TO CONTRACT**

##### **450:1-3-5. Staff qualifications for contracted entities**

(a) All staff who provide clinical or supportive services for an agency contracting with ODMHSAS shall have documented qualifications, licensing or training specific to the clinical services they provide.

(b) The following service providers, as defined in 450:1-1-1.1, may provide behavioral health treatment and support services as agreed upon per ~~contact~~contract between ODMHSAS and the contractor:

- (1) Behavioral Health Aide (BHA);
- (2) Behavioral Health Case Manager (CM);
- ~~(3) Behavioral Health Rehabilitation Specialist (BHRS);~~
- ~~(4)~~(3) Certified Alcohol and Drug Counselor (CADC);
- ~~(5)~~(4) Employment Consultant (EC);
- ~~(6)~~(5) Family Support and Training Provider (FSP);
- ~~(7)~~(6) Intensive Case Manager (ICM);
- ~~(8)~~(7) Licensed Behavioral Health Professional (LBHP);
- ~~(9)~~(8) Licensed Mental Health Professional (LMHP);
- ~~(10)~~(9) Licensed Physician;
- ~~(11)~~(10) Licensed Practical Nurse;
- ~~(12)~~(11) Paraprofessional;
- ~~(13)~~(12) Psychiatrist;
- ~~(14)~~(13) Peer Recovery Support Specialist ~~(RSS)~~(PRSS);
- ~~(15)~~(14) Registered Nurse;
- (16) Support Services Provider (SSP).

(c) Compliance with 450:1-3-5 shall be determined by a review of staff personnel files and other supporting documentation provided.

(d) Failure to comply with 450:1-3-5 will result in the initiation of procedures to deny, suspend and/or revoke certification.

## SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF FACILITY SERVICES

### 450:1-9-5.1. Types and duration of certification status for facilities and programs

(a) The ODMHSAS may grant the following types of certification for the durations specified below.

(1) **Permit for Temporary Operations.** Permits for temporary operations may be granted upon ODMHSAS's verification that the organization has complied with all Core Organizational Standards and Core Operational Standards applicable to the related type of services for which certification is sought. In addition, for facilities that have provided services for 30 days or longer applicable to this type of certification ODMHSAS may review compliance with applicable Quality Clinical Standards. The Permit will expire at the end of six (6) months or if a subsequent certification is achieved by the organization and subsequently granted by ODMHSAS prior to the expiration of the Permit. ODMHSAS may extend a Permit for no more than 60 days in the event of extenuating circumstances as determined by ODMHSAS.

(2) **Probationary Certification.** Probationary Certification may be awarded for a one (1) year period by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 and when ODMHSAS verifies that all conditions in 450:1-9-5.1(a)(3) exist but the program initiated operations prior to the awarding of a Permit for Temporary Operations for the services for which certification is statutorily required. Organizations awarded Probationary Certification must apply for and be awarded Probationary Certification for two additional one (1) year terms, prior to being considered for other categories of ODMHSAS Certification.

(3) **Certification.** ODMHSAS may award Certification for a one (1) year or two (2) year period beyond the period approved for a Permit for Temporary Operations or as a renewal of a previously awarded Certification in accordance with applicable chapters as stipulated in 450:1-9-5 and when ODMHSAS determines that the organization has met minimal compliance with each type of standard

(i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards). To qualify for Certification, programs must meet the following:

(A) Demonstrate compliance with all Core Organizational Standards and with all Core Operational Standards as verified by ODMHSAS and within timeframes stipulated by ODMHSAS; and,

(B) For a one (1) year certification, demonstrate compliance with at least 51% of all Quality Clinical Standards on the initial site review, and file an acceptable plan of correction and demonstrate compliance with 100% of Quality Clinical Standards, as verified by ODMHSAS in accordance 450:1-9-7.1 and 450:1-9-7.3; or,

(C) For a two (2) year certification, demonstrate compliance with at least 75% of all Quality Clinical Standards on the initial site review, and file an acceptable plan of correction and demonstrate compliance with 100% of Quality Clinical Standards, as verified by ODMHSAS in accordance 450:1-9-7.1 and 450:1-9-7.3.

(D) Programs with fewer than five (5) active cases for which clinical records could be reviewed can be recommended for no more than a one (1) year certification.

~~(D)~~(E) Community Residential Mental Health Programs can be recommended for no more than a one (1) year certification.

~~(E)~~(F) Programs awarded a Probationary Certification are not eligible for Certification under the conditions described in 450:1-9-5.1(3) until all conditions of 450:1-9-5.1(2) have been satisfied.

**(4) Certification with Distinction.** Certification with Distinction may be awarded for up to three (3) years by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 for programs seeking renewal of previously awarded certification when ODMHSAS verifies all of the following minimal conditions are satisfied.

(A) Programs must have provided services with an approved ODMHSAS Certification as described in 450:1-9-5.1(3) for one (1) year or longer in addition to the time services were provided under an approved Permit for Temporary Operations or a Probationary Certification.

(B) Programs must demonstrate compliance with all Core Organizational Standards and with all Core Operational Standards as verified by ODMHSAS; and,

(C) Programs must also demonstrate compliance with at least 90% of all Quality Clinical Standards on the initial renewal site visit and review as verified by ODMHSAS. Compliance may be determined during initial site reviews or during additional site reviews following the implementation of a plan of correction as required ODMHSAS, in accordance 450:1-9-7.1 and 450:1-9-7.3.

(D) Programs for which ODMHSAS determines compliance with all standards as required in (a), (b), and (c) may be recommended for Certification with Distinction for a three (3) year period.

(E) ODMHSAS may refund certification renewal application fees for organizations that demonstrate 100% compliance with all standards (i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards) during the initial renewal site visit and review.

(F) Community Residential Mental Health Programs can be recommended for no more than a one (1) year Certification with Distinction.

(G) Programs awarded a Probationary Certification are not eligible for Certification under the conditions described in 450:1-9-5.1(4) until all conditions of 450:1-9-5.1(2) have been satisfied.

**(5) Certification with Special Distinction.** Certification with Special Distinction may be awarded for up to three (3) years by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 for programs seeking renewal of previously awarded certification when ODMHSAS verifies all of the following minimal conditions are satisfied.

- (A) The program must meet all conditions for Certification with Distinction as outlined in 1-9-5.1(4); and,
  - (B) The program has attained national accreditation (COA, CARF, or TJC) for the services to which ODMHSAS Certification applies.
  - (C) Certification with Special Distinction will be reduced by ODMHSAS to Certification with Distinction by ODMHSAS if during the certification period for which the Special Distinction was approved, the program fails to maintain national accreditation status.
  - (D) ODMHSAS may refund certification renewal application fees for organizations that demonstrate 100% compliance with all standards (i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards) during the initial renewal site visit and review.
  - (E) Community Residential Mental Health Programs can be recommended for no more than a one (1) year Certification with Distinction.
  - (F) Programs awarded a Probationary Certification are not eligible for Certification under the conditions described in 450:1-9-5.1(4) until all conditions of 450:1-9-5.1(2) have been satisfied.
- (b) Permits for Temporary Operations granted to applicants for initial certification of a facility, location, or level of service shall be for a period of six (6) months and shall become effective immediately upon approval by the ODMHSAS Board, the Commissioner or designee.
- (c) Certification, other than Permits for Temporary Operations, granted to an applicant shall become effective the first day of the month following the date of the action by the Board, provided however, the Board may waive this requirement and make the Certification effective immediately.