



BEHAVIORAL HEALTH HANDBOOK 2024



OHIO AUDITOR OF STATE KEITH FABER



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January 31, 2024

Ms. Cheri Walter, Chief Executive Director
Ohio Association of County Behavioral Health Authorities
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Columbus, Ohio 43215

Re: Behavioral Health Handbook

Dear Ms. Walter:

At the request of your Association, the Auditor of State's legal, audit and local government services sections were pleased to participate in reviewing the updated Behavioral Health Handbook as it pertains to accounting and auditing related issues.

The manual serves as a comprehensive overview of Board matters. The handbook addresses a wide range of topics and should serve as a useful reference tool for ADAMH Boards.

The Auditor of State's review was not intended to provide legal interpretations or to answer every question which may affect ADAMH Boards. Although, we believe this handbook provides a comprehensive overview of Board matters, it is by no means a substitute for legal advice. You should discuss any matter of uncertainty with your legal advisor.

Also, the Auditor of State review does not, other than as clearly specified in the text, deal with the power, authority or responsibilities of agencies providing alcohol, drug addiction and mental health services to the community under contract with a Board.

Please don't hesitate to contact our staff if you have any questions. The names of the appropriate representatives of the Auditor of State to direct your questions, including addresses and toll free numbers, as set forth in the appendix. We would be happy to help you in any way we can to your request. We look forward to working with you in the coming years. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Keith Faber".

Keith Faber
Ohio Auditor of State



January 31, 2024

Dear ADAMH Board Executive Director,

The Ohio Association of County Behavioral Health Authorities, in partnership with the Auditor of State's office, is pleased to provide you with this updated copy of the *Behavioral Health Handbook*.

The *Behavioral Health Handbook* is a comprehensive reference guide that identifies and explains the laws and regulations that address the operational duties and responsibilities of Alcohol, Drug Addiction, and Mental Health (ADAMH) Boards in Ohio including a detailed overview of fiscal and auditing requirements. This *Handbook* provides guidance that should help make complying with these laws and regulations easier. Additionally, this Handbook should help you prepare for annual audits.

This represents the third update of the *Behavioral Health Handbook*, and we are grateful to the Auditor of State's office for the continued partnership to make this resource available to local ADAMH Boards. It is our hope that you and your staff find this *Handbook* to be a helpful, easy to use resource as you continue your work.

Sincerely,

Cheri L. Walter
Chief Executive Officer



Behavioral Health Handbook

January 2024

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PREFACE

Ohio's Alcohol, Drug Addiction, and Mental Health (ADAMH) Boards are statutorily empowered under Chapter 340 of the Revised Code to plan, develop, fund, administer, and evaluate their local systems of mental health and addiction services. Ohio's 50 ADAMH Boards, covering all 88 counties, provide community members with access to a statutorily defined continuum of care that includes prevention, treatment, and recovery supports through contracts with service providers. As of the date of publication of this Handbook, there are 31 single-county boards and 19 joint-county boards.

This Handbook is intended to be a general reference guide for public officials who have a need for knowledge in this area. It is not designed to provide legal interpretations or to answer every question that may affect Alcohol, Drug Addiction, and Mental Health Services Boards (referred to in this manual as "ADAMH Boards"). For example, it does not, other than as clearly specified in the text, deal with the requirements applicable to providers of mental health and addiction services. The Frequently Asked Questions section in the Appendix is intended to provide a quick reference for some of the Handbook's main topics of interest.

As particular problems arise, ADAMH Board Executive Directors and governing board members must seek the advice and opinion of their legal advisor.

Questions may also be submitted to the office of the Auditor of State regarding content areas that are under its purview. The names of the appropriate representatives of the Auditor of State to whom to direct your questions, including email addresses and toll-free numbers, are set forth in the appendix.

PART I

**ALCOHOL, DRUG ADDICTION, AND
MENTAL HEALTH SERVICE
DISTRICTS**

ALCOHOL, DRUG ADDICTION, AND MENTAL HEALTH SERVICE DISTRICTS

PURPOSE AND AUTHORITY

Ohio Revised Code (O.R.C.) Section 340.011(A) sets forth the purposes of the Ohio Mental Health Act of 1988 and the Alcohol and Drug Addiction Services Act of 1989. According to this Section, Chapter 340, which encompasses the statutory powers and duties of ADAMH Boards, is to be interpreted to accomplish the following:

1. Establish a unified system of treatment for persons with mental illnesses and persons with addiction;
2. Establish a community support system available for every alcohol, drug addiction, and mental health service district;
3. Protect the personal liberty of persons with mental illness so that they may be treated in the least restrictive environment;
4. Encourage the development of high-quality, cost-effective, and comprehensive services, including culturally sensitive services;
5. Foster the development of comprehensive community mental health services, based on recognized local needs, especially for person with severe mental disabilities;
6. Ensure that services provided meet minimum standards established by the director of the Ohio Department of Mental Health and Addiction Services;
7. Promote the delivery of high-quality and cost-effective addiction and mental health services; and
8. Promote the participation of persons receiving mental health and addiction services in the planning, delivery, and evaluation of these services.

ESTABLISHMENT OF ALCOHOL, DRUG ADDICTION, AND MENTAL HEALTH SERVICE DISTRICTS

O.R.C. 340.01 requires that an alcohol, drug addiction, and mental health service district be established in each county, or combination of counties with a population of at least fifty thousand. In addition, any county or combination of counties with a population of less than fifty thousand may establish a district, by formal action of the board(s) of county commissioners of the county or counties involved, if authorization is obtained from the Director of the Ohio Department of Mental Health and Addiction Services (OhioMHAS). "Population" for such purposes is that shown by the most recent regular federal census. O.R.C. 1.59(D). When a district is comprised of more than one county, it is known as a joint-county district. O.R.C. 340.01(B). Generally, no distinction exists between a single and joint county ADAMH Board concerning their general operational powers, functional powers, and duties, however, some distinctions exist with regard to financial matters. 1989 O.A.G. 89-063. These distinctions will be elaborated on when discussed in this Handbook.

For a county to withdraw from a joint-county ADAMH Board district, the board of county commissioners requesting withdrawal from the joint-county district must submit a resolution requesting withdrawal together with a comprehensive plan that is in compliance with rules adopted by the Director of OhioMHAS under O.R.C. 5119.22. The plan must include: proposed bylaws for the operation of the newly established district; a list of potential board members; a list of the behavioral health services available in the newly established district, including inpatient, outpatient,

Prevention, and housing services; equitable adjustment and division of all services, assets, property, debts and obligations of the former district; a plan ensuring no disruption in behavioral health services in the newly established district; and provision for the employment of an executive director in the newly established district. The resolution and comprehensive plan must be submitted to the joint-county ADAMH Board, the boards of county commissioners of each county in the district, and the Director of Mental Health and Addiction Services. Withdrawal requires the consent of the Director of OhioMHAS and cannot take effect earlier than one year after submission of the resolution unless the consent of all participating counties, through the boards of county commissioners, is obtained. The Director must approve the plan not later than one year after the date the resolution was adopted by the board of county commissioners.

Any county withdrawing from a joint-county district will continue to have levied against its tax list and duplicate any tax levied by the district during the period in which the county was a member of the district, until such time as the levy expires or is renewed or replaced. For any tax levied under O.R.C. section 5705.19 by a joint-county district formed on or after June 6, 2023, revenue from the tax must only be expended for the benefit of the residents of the county from which the revenue is derived. A joint-county district is not considered to be formed by virtue of a county joining or withdrawing from a district or if a joint-county service district merges with another joint-county district.

A note about the boards formerly known as community mental health (CMH) boards and alcohol and drug addiction services (ADAS) boards:

As part of the Alcohol and Drug Addiction Services Act of 1989, the boards of county commissioners in alcohol, drug addiction, and mental health service districts with certain population levels were given the option to establish a separate alcohol and drug addiction services board and a separate community mental health services board as the entities responsible for providing behavioral services in that service district. There are no longer any separate mental health and alcohol and drug addiction services boards and no statutory mechanism for them to be established. As such, O.R.C. § 340.021 and other references to mental health and alcohol and drug addiction services boards are no longer applicable although they have not yet been repealed.

ACCOUNTABILITY

The Comptroller General of the United States, in *Standards for Audit of Governmental Organizations, Programs, Activities and Functions* (2018 Revision Technical Update April 2021) states:

The concept of accountability for use of public resources and government authority is key to our nation's governing process. Management and officials entrusted with public resources are responsible for carrying out public functions and providing service to the public effectively, efficiently, economically, ethically, and equitably within the context of the statutory boundaries of the specific government program.

It is firmly established in Ohio that all public agencies, including ADAMH Boards, possess only such powers and authority as are expressly granted to them by statute, or necessarily implied therefrom. 97 O.A.G. 97-051. Therefore, it is necessary that officials of a Board, when contemplating a course of action, find express or implied authority for such action in the Ohio Revised Code. If there is any doubt as to the authority for a contemplated action or for the expenditure of funds, it is to be resolved against the exercise of such authority or the expenditure of funds. *State, ex rel, Locher v. Menning, 95 Ohio St. 97 (1916).*

State/County Agency Accountability

ADAMH Boards are specifically accountable to numerous public agencies for the manner of their operation. These include, for example: the Ohio Public Employees Retirement System, the Ohio Bureau of Workers' Compensation, the Ohio Ethics Commission and, of course, the county budget commission and the county fiscal system organized around it. There are, however, three agencies that may be considered in detail: (1) the Ohio Department of Mental Health and Addiction Services; (2) the board(s) of county commissioners of the county or counties comprising the service districts; and (3) the Office of the Auditor of State.

Department of Mental Health and Addiction Services

The Ohio Department of Mental Health and Addiction Services (OhioMHAS) is responsible for the regulation and oversight of Ohio's community mental health and addiction services system. The Director of OhioMHAS is also vested with rule making authority pursuant to O.R.C. Chapter 119 and with regulatory responsibility to effectuate the purposes of O.R.C. Chapters 340, 5119, and 5122 regarding the duties and obligations of ADAMH Boards. OhioMHAS also promulgates rules that govern the licensing and certification of mental health and addiction services providers and facilities and that define the minimum requirements for maintaining certification and licensure.

The scope of this Handbook is limited primarily to the fiscal and legal requirements of ADAMH Boards and generally does not extend to the rules of OhioMHAS pertaining to service providers.

The legality of an ADAMH Board's actions, responsibilities, or duties may be affected by the statutes and rules of OhioMHAS or other sections of the Ohio Revised Code. Therefore, it is strongly recommended that prior approval of OhioMHAS, or a written legal opinion by the Board's legal advisor, be sought in cases of doubt.

Boards of County Commissioners

ADAMH Boards are considered to be independent political subdivisions and, per numerous Ohio Attorney General Opinions, neither single-county nor joint-county ADAMH Boards are considered to be county offices or boards and are not subject to supervisory or operational control by boards of county commissioners. 75 O.A.G. 75-084; 84 O.A.G. 84-009; 89 O.A.G. 89-063. In 75 O.A.G. 75-084, the AG clearly stated that "it is appropriate to state that neither a single nor a joint county community mental health board is a "county board" or a "county commission" subject to the direct supervisory control of the board or boards of county commissioners.

A 2013 Attorney General used the following analysis in confirming that a single county-board is not a county office:

Although, the geographic boundaries of a single county ADAMH district are coextensive with the territorial limits of the county...this fact is not determinative. The other factors used in determining whether an entity is a county office support the conclusion that a single county ADAMH district is not a county office....

First, a single county ADAMH district is not organized or administered solely by a county...the state has a greater supervisory role over ADAMH districts than a county. Finally, funding for an ADAMH district is provided by a variety of sources. Accordingly, consideration of all the factors used in determining whether an entity is a county office leads to the conclusion that a single county ADAMH district is not a county office... 2013 O.A.G. 13-006

Although the board(s) of county commissioners of the counties comprising a single or joint county service district do not possess operational control over ADAMH Boards, they do have statutorily

defined roles that will influence the operations of the Boards. This may be done by means of their authority to appoint governing board members, appropriate money for the district, and to seek a tax levy in excess of ten mills.

In addition, ADAMH Boards are required to submit an annual report of the services under their jurisdiction, including a fiscal accounting, to the board of county commissioners pursuant to O.R.C. 340.03(A)(10). The Board of a joint-county district must submit the report to the boards of county commissioners of each county in the district.

ADAMH Boards are also required, when setting priorities for the operation of addiction services, to consult with the boards of county commissioners in their service districts regarding referrals for services made by a public children services agency (PCSA) for children, or the parents, guardians and custodians of those children, that have been identified by a PCSA as being at imminent risk of abuse or neglected because of an addiction of a parent, guardian or custodian. O.R.C. 340.03(A)(1)(b).

Auditor of State

Pursuant to O.R.C. Chapter 117, the Auditor of State is responsible for the audit of all public offices, in accordance with generally accepted government auditing standards, including joint-county ADAMH Boards and single-county ADAMH Boards. The Auditor of State is empowered to inquire into "the methods, accuracy, and legality of the accounts, records, financial reports, files, and reports of the office, whether the laws, rules, ordinances, and orders pertaining to the office have been observed, and whether the requirements and rules of the Auditor of State have been complied with." O.R.C. 117.11(A). The Auditor of State is also authorized to prescribe financial accounting and reporting requirements for all public offices other than state agencies. O.R.C. 117.43.

The Auditor of State has established within its office a Local Government Services Section with the responsibility for assisting in the financial and reporting requirements for public offices and for providing such offices with professional and consulting services on a cost basis. Assistance is available on a charge-back basis for consultation regarding accounting systems, internal control study and evaluation, management studies, cash flow analysis, financial statement preparation, records reconstruction, and financial forecasts. The toll-free number to contact the Local Government Services Section is provided in the Appendix of this Handbook.

Audit services are provided by the Audit Division, with a central administrative office in Columbus and regional offices in Southeast (Cambridge), East (Canton), Southwest (Cincinnati), Northeast (Cleveland), Central/State (Columbus), Northwest (Toledo) and West (Dayton). Toll-free numbers for the central administrative office in Columbus and for the regional offices are listed in this Handbook.

PART II

ADAMH

BOARD GOVERNANCE

ADAMH BOARD GOVERNANCE

Each ADAMH Board is governed by a robust and diverse group of volunteer community members who understand their unique communities and the intricacies of their service districts. Local citizen leaders are best positioned to assess local needs, determine local priorities, create local plans, and make local decisions. The appointment to and organization of Alcohol, Drug Addiction, and Mental Health Services Boards is governed by O.R.C. 340.02.

Governing Board Size

The governing boards of ADAMH Boards may consist of 9, 12, 14, 15, or 18 members. The board of county commissioners is authorized to determine the size of the governing board in a single county. In a joint-county district, all county commissioners must jointly determine board size. To change the size of an existing governing board, the board(s) of county commissioner must send a representative to a meeting of the governing board to solicit feedback on the change and must consider the feedback received. If the commissioners decide to proceed with a change after considering the feedback received, the board(s) of county commissioners must adopt a resolution specifying the selected board size and notify OhioMHAS of the size that has been selected in order to implement the change. A change in board size may not occur more frequently than once every four calendar years. When a board size decreases, the reduction in board members must be implemented by not filling vacancies as they occur.

Appointment of Board Members

One third of governing board members must be appointed by OhioMHAS and two thirds by the county commissioners.

In a joint-county ADAMH Board district, the county commissioners' appointments are to be made by each participating county in as nearly as possible the same proportion as that county's population bears to the total population of the district, except that at least one member must be appointed from each participating county.

Eligibility Requirements of Board Members

All governing board members must be residents of the service district in which they serve, and the membership must, as nearly as possible, reflect the composition of the population of the service district as to race and gender.

Additionally, half of the governing board members must be interested in mental health services and half must be interested in alcohol, drug, or gambling addiction services. The director of OhioMHAS must also ensure that at least one member of the Board is a person who has received or is receiving mental health services, at least one is a parent or other relative of such a person, that at least one is a person who has received or is receiving addiction services and at least one is a parent or other relative of such a person, at least one is a clinician with experience in the delivery of mental health services, and at least one is a clinician with experience in the delivery of addiction services. A single governing board member who meets both qualifications may fulfill both clinician requirements.

Oath of Office

As public officers within the scope of Article 15, Section 7, Ohio Constitution, governing board members are subject to O.R.C. 3.22, which requires every person appointed or re-appointed to a public office under the laws of this state to take an oath of office before entering upon the discharge of his or her duties. Pursuant to O.R.C. 3.23, the oath must be to support the Constitution of the

United States and the Constitution of the State of Ohio and to faithfully discharge the duties of the office.

The oath of office may be administered by a notary public, a judge, any elected official that serves within the Board's service district, or by any member of the General Assembly throughout the state. O.R.C. 3.24. It is recommended that the oath also be in writing, signed by the public official, and filed with the records of the Board.

Quorum

A quorum is needed to bind the actions of Boards. Chapter 340 does not specify a quorum requirement. See 1978 Ohio Atty. Gen. Op. 047. Per applicable case law, a quorum is constituted when the majority of the governing board members are present and competent to transact business, in the absence of other members. *State ex rel. Cline v. Wilkesville Township* (1870), 20 Ohio St. 288, 294. When there is a vacancy or vacancies on a board, a quorum will consist of the majority of all other members who remain qualified to transact business. See, *State ex rel. Attorney General v. Orr* (1899), 61 Ohio St. 348; *Meier v. McBride*, 1995 Ohio App. LEXIS 749. See cf., *State ex rel. D'Alton v. Davis* (1915), 5 Ohio App. 43 (fair inference that the general assembly contemplated that a vacancy on a county commission might or might not be filled, depending on the judgment of the appointing power, and that business of the county would not come to a stop).

Conflicts of Interest

O.R.C. 340.02 prohibits governing board members and employees from engaging in the following dual roles to avoid conflicts of interest:

A governing board member or employee of a Board is prohibited from serving as a member of the governing board of any provider with which the Board has entered into a contract for the provision of services or facilities.

A governing board member of a Board is prohibited from being an employee of any provider with which the Board has entered into a contract for the provision of services or facilities. A person is not permitted to be an employee of both a Board and a provider unless the Board and provider both agree in writing.

Governing board members and employees of Boards are prohibited from having a spouse, child, parent, brother, sister, grandchild, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law that serves as a member of the governing board of any provider with which the Board has entered into a contract for the provision of services or facilities or that serves as a County Commissioner in any of the counties in the Board's service district.

In addition to these conflicts of interest that are specific to Boards, Ohio's ethics laws must also be considered when determining whether a potential conflict exists. For more information about Ohio's ethics laws, see the *Ohio Ethics Law* heading in the *Public Officials and Employees* section.

Training Requirement

Governing board members are required to attend at least one in-service training session each year that is provided or approved by OhioMHAS. O.R.C. 340.02.

Length of Term

Each governing board member is to be appointed for a term of four years, commencing the first

day of July, except that when a new ADAMH Board is established, the initial appointments must be staggered among the members as equally as possible with terms of two years, three years, and four years.

Governing board members may not serve for more than two consecutive four-year terms under the same appointing authority. A member may serve for three consecutive terms under the same appointing authority only if one of the terms is for less than two years. A member who has served two consecutive four-year terms or three consecutive terms totaling less than ten years is eligible for reappointment by the same appointing authority one year following the end of the second or third term, respectively. O.R.C. 340.02

Vacancy

When a vacancy occurs, appointment for the expired or unexpired term must be made in the same manner as an original appointment. The board shall notify the appointing authority either by certified mail or, if the board has record of an internet identifier of record associated with the authority, by ordinary mail and by that internet identifier of record of any vacancy and shall fill the vacancy within sixty days following that notice. O.R.C. 340.02 OhioMHAS requirements for ADAMH Boards to notify the department and the public when a vacancy occurs and for board member applications are contained in O.A.C. 5122:2-1-04.

Resignation

As a public officer, a governing board member may resign from office if he/she so desires. A formal resignation should be directed in writing to the Board with copies to the appointing authority and the Director of OhioMHAS, as appropriate. The governing board should formally accept the resignation and place the letter of resignation with its records.

Removal

Any governing board member may be removed from office by the appointing authority at will and must be removed by the appointing authority if the member is barred from serving due to a conflict of interest as described in O.R.C 340.02. Before a member may be removed at will, the member must be informed in writing of the proposed removal and afforded an opportunity for a public hearing.

Upon the absence of a board member within one year from either four Board meetings or from two Board meetings without prior notice, the Board must notify the appointing authority, which may vacate the appointment and appoint another person to complete the member's term.

Compensation

Members of the governing board must serve without compensation but must be reimbursed for actual and necessary expenses incurred in the performance of their official duties, as defined by rules of OhioMHAS. O.R.C. 340.02. See the *Expenses* heading in the *Public Officials and Employees* section for a discussion of actual and necessary expenses.

Membership Reports

Annually, and upon any change in membership, each Board must submit to OhioMHAS a list of all current members of its governing board, including the appointing authority for each member and the member's specific qualification for appointment pursuant to O.R.C. 340.02 or 340.021, if applicable. O.R.C. 340.08(G)

Board Governance

It is recommended that Boards have policies in place that address board governance such as the board's governance process, member requirements, the relationship of the governing board and the Executive Director including delegation to the Executive Director and governing board duties, authority, and limitations on authority.

Governing board members are "public officials" under Ohio law. Therefore, statutes that refer to the duties and requirements of public officials such as the ethics and sunshine laws should be addressed in board governance policies.

Governing Documentation and Performance of Necessary Duties

Pursuant to O.R.C. 340.03(B), the Board must establish rules, operating procedures, standards, and bylaws, and perform such other duties as may be necessary or proper to carry out the purposes of O.R.C. Chapter 340.

The development of operating policies and procedures may be delegated by the governing board to the Executive Director or may be subject to review or approval by the governing board.

PART III

**ADAMH BOARD
POWERS AND DUTIES**

ADAMH BOARD POWERS AND DUTIES

As creatures of statute, ADAMH Boards only have those powers and duties that the General Assembly has either expressly or by necessary implication imposed on them.

The powers and duties specific to ADAMH Boards are mostly contained in O.R.C. Chapter 340 although Chapter 5119 and 5122 also contain applicable provisions.

In addition to the powers and duties that are specific to Boards, Boards must also comply with provisions of the Ohio Revised Code that are applicable to “political subdivisions” and “public offices” since Boards are those types of entities under Ohio law.

PLANNING AND SERVICES

Community Addiction and Mental Health Services Planning Agency

Pursuant to O.R.C. 340.03(A)(1), ADAMH Boards serve as the community addiction and mental health services planning agency for the county or counties under their jurisdiction and as such are required to:

- (a) Evaluate the need for facilities and community addiction and mental health services.
- (b) In cooperation with other local and regional planning and funding bodies and with relevant ethnic organizations, assess the community addiction and mental health needs, evaluate strengths and challenges, and set priorities for community addiction and mental health services, including treatment and prevention.

When an ADAMH Board sets priorities for the operation of addiction services, the Board must consult with the county commissioners of the counties in the Board's service district regarding the services described in section 340.15 of the Revised Code (i.e. services to the addicted parents, guardians, custodians or caregivers and the children of those individuals that have been referred to a community addiction services provider by a public children services agency that has identified the child as being at imminent risk of being abused or neglected because of the addiction of a parent, guardian, custodian or caregiver) and must give priority to those services in the Board's community addiction and mental health services plan, except that those services must not have a priority over services provided to pregnant women under programs developed pursuant to the requirements of O.R.C. 5119.17.

- (c) In accordance with guidelines issued by the Director of OhioMHAS after consultation with Board representatives, develop and submit to OhioMHAS a community addiction and mental health services plan listing community addiction and mental health services' needs, including the needs of all residents of the district currently receiving inpatient services in state-operated hospitals, the needs of other populations as required by state or federal law or programs, the needs of all children subject to a determination made pursuant to O.R.C. 121.38 (i.e. Family and Children First Council determinations regarding the services or funding for services a child is to receive from agencies represented on the Council); and priorities for facilities and community addiction and mental health services during the period for which the plan will be in effect.

OhioMHAS is required to inform ADAMH Boards of the Department's priorities in a timely manner to enable Boards to consider them before developing and submitting their plans.

OhioMHAS must approve or disapprove the plan, in whole or in part, according to the criteria developed pursuant to O.R.C. 5119.22. Eligibility for state and federal funding is contingent upon an approved plan or relevant part of a plan.

If a Board determines that it is necessary to amend a plan that has been approved by OhioMHAS, the Board must submit a proposed amendment to the Director. The Director must inform the Board of the reasons for disapproval of all or part of an amendment and the criteria that must be met before the amendment may be approved. The Director must provide the Board with an opportunity to present its case on behalf of the amendment. The Director must give the Board a reasonable time in which to meet the criteria and must offer the Board technical assistance to help it meet the criteria.

The Board must operate in accordance with the plan approved by the Department.

Proposed Services

Pursuant to O.R.C. 340.08(B), each ADAMH Board must submit to OhioMHAS a proposed list of addiction services, mental health services, and recovery supports it intends to make available. The Board must include the services and supports required by O.R.C. 340.032 to be included in its community-based continuum of care (See the *Community-Based Continuum of Care* heading in this section) and the services required by O.R.C. 340.15 to be provided to children, or the parents, guardians, and custodians of children, that have been identified by a PCSA as being at imminent risk of abuse or neglect because of addiction of a parent, guardian or custodian.

The Board must explain the manner in which it intends to make the services available, and the list of services must be compatible with the budget submitted pursuant to O.R.C. 340.08(A).

OhioMHAS must approve or disapprove the proposed list of services in whole or in part. Prior to a final decision to disapprove of the plan in whole or part, O.R.C. 5119.22(G) requires a representative of the Director of OhioMHAS to meet with the Board and discuss the reason for the proposed action and any corrective action that should be taken to make the list acceptable. OhioMHAS must also offer technical assistance to the Board to assist in making the list acceptable and provide a reasonable time for the Board to submit a revised list.

If a Board determines that it is necessary to amend an approved list, a proposed amendment must be submitted to OhioMHAS for approval or disapproval in whole or part. If disapproved of in whole or part, the Director of OhioMHAS must provide the Board an opportunity to present its position. The Board must also be informed of the reasons for disapproval and of the criteria that must be met before the proposed list may be approved. The Director must provide the Board with a reasonable time within which to meet the criteria and must offer the Board technical assistance to help it meet the criteria.

Community-Based Continuum of Care

Pursuant to O.R.C. 340.032 and 340.033, after consultation with relevant constituencies, each ADAMH Board must establish, to the extent resources are available, a community-based continuum of care that includes all or the following as essential elements:

- 1) Prevention and wellness management services;

- 2) Outreach and engagement activities that include, at a minimum, locating persons in need of addiction or mental health services to inform them of available services and supports and helping persons who receive mental health or addiction services obtain services that are necessary to meet basic human needs for food, clothing, shelter, medical care, personal safety, and income;
- 3) Assessment services;
- 4) Care coordination;
- 5) Residential services;
- 6) At least the following outpatient services:
 - a) Non intensive
 - b) Intensive, such as partial hospitalization and assertive community treatment
 - c) Withdrawal management
 - d) Emergency and crisis
- 7) Where appropriate, at least the following inpatient services:
 - a) Psychiatric care
 - b) Medically managed alcohol or drug treatment
- 8) At least all of the following recovery supports:
 - a) Peer support
 - b) A wide range of housing and support services, including recovery housing residences
 - c) Employment, vocational, and educational opportunities
 - d) Assistance with social, personal, and living skills
 - e) Multiple paths to recovery such as twelve-step approaches and parent advocacy connection
 - f) Support, assistance, consultation, and education for families, friends, and persons receiving addiction services, mental health services, and recovery supports
- 9) An array of addiction services and recovery supports for all levels of opioid and co-occurring drug addiction to include at least ambulatory and sub-acute detoxification, non-intensive and intensive outpatient services, medication-assisted treatment, peer support, residential services, recovery housing residences, and multiple paths to recovery such as twelve-step approaches;
- 10) Any additional elements that OhioMHAS, pursuant to O.R.C. 5119.21, determines are necessary to establish the community-based continuum of care.

Recovery Housing Residences

Recovery housing residences are required to be included in each ADAMH Board's community-based continuum of care. O.R.C. 5119.01(A)(17) defines a "recovery housing residence" as a residence for individuals recovering from alcohol use disorder or drug addiction that provides an alcohol-free and drug-free living environment, peer support, assistance with obtaining alcohol and drug addiction services, and other recovery assistance for alcohol use disorder and drug addiction." As of January 1, 2025, all recovery housing residences in the State of Ohio must be certified by OhioMHAS or accredited by an accrediting body approved by OhioMHAS.

Pursuant to O.R.C. 340.034, the following requirements apply to recovery housing residences:

- (a) Recovery housing residences must comply with OhioMHAS certification/accreditation and monitoring requirements contained in O.R.C. 5119.39 to 5119.397.
- (b) Recovery housing residences may only be operated by an ADAMH Board if one of the following applies:
 - (i) The ADAMH Board operated the recovery housing residence on July 1, 2017.
 - (ii) The ADAMH Board utilizes local funds in the development, purchase, or operation of the residence.

- (iii) The ADAMH Board determines that there is a need for it to assume the operation of the residence, such as when an existing operator of the recovery housing goes out of business, and the Board considers the assumption of operation of the residence to be in the best interest of the community.
- (c) Recovery housing residences must have protocols for all of the following:
 - (i) Administrative oversight;
 - (ii) Quality standards; and
 - (iii) Policies and procedures, including house rules, for its residents to which the residents must agree to adhere.
- (d) Family members of residents may reside in the recovery housing to the extent permitted by the recovery housing residence's protocols.
- (e) A resident's duration of stay must not be limited to an arbitrary or fixed amount of time. Instead, each resident's duration of stay must be determined by the resident's needs, progress, and willingness to abide by the residence's protocols, in collaboration with the residence's operator, and, if appropriate, in consultation and integration with a community addiction services provider.
- (f) A recovery housing residence may permit its residents to receive medication-assisted treatment.
- (g) A resident of a recovery housing residence may receive addiction services that are certified by OhioMHAS under O.R.C. 5119.36.

Public Children Services Agency Referrals

ADAMH Boards must comply with OhioMHAS and Department of Medicaid requirements and procedures for prior notification and service coordination between public children's services agencies (PCSA) and ADAMH Boards when a PCSA refers a child in its custody to a Board for services funded by the Board. O.R.C. 340.16.

Consumer Involvement

Each Board is required to establish a mechanism for obtaining advice and involvement of persons receiving addiction, mental health services, or recovery supports on matters pertaining to services and supports in the Board's service district. O.R.C. 340.03(A)(13)

Medicaid Recipient Advocacy

ADAMH Boards are permitted to advocate on behalf of Medicaid recipients enrolled in Medicaid managed care organizations and Medicaid-eligible individuals that have been identified as needing addiction or mental health services. O.R.C. 340.035

Indigent Driver Treatment

ADAMH Boards are required to administer the indigent drivers' alcohol treatment program of courts located in their service districts in accordance with the requirements of O.R.C. 4511.191(H).

County Hub Program to Combat Opioid Addiction

O.R.C. 340.30 requires ADAMH Boards to administer a county hub program to combat opioid addiction in each county the Board serves. The purpose of the county hub program is to:

- (a) Strengthen county and community efforts to prevent and treat opioid addiction;
- (b) Educate youth and adults about the dangers of opioid addiction and the negative effects it has on society;
- (c) Promote family building and workforce development as ways of combatting opioid addiction in communities;

- (d) Encourage community engagement in efforts to address the above purposes.

Direct Provision of Services or Operation of Facilities

Pursuant to O.R.C. 340.037, and with the prior approval of the Director of OhioMHAS, an ADAMH Board may operate a facility or provide an addiction or mental health service if there is no other qualified private or public facility or community addiction or mental health services provider that is immediately available and willing to operate such a facility or provide the service, in accordance with the following:

- (i) In an emergency situation, an ADAMH Board may operate a facility or provide an addiction or mental health service in order to provide essential services for the duration of the emergency;
- (ii) In a service district with a population of at least one hundred thousand but less than five hundred thousand, an ADAMH Board may operate a facility or provide an addiction or mental health service for not longer than one year;
- (iii) In a service district with a population of less than one hundred thousand, an ADAMH Board may operate a facility or provide an addiction or mental health service for not longer than one year, except that such a Board may operate a facility or provide an addiction or mental health service for more than one year with the prior approval of the Director and the board of county commissioners, or of a majority of the boards of county commissioners if the district is a joint-county district.

The Director of OhioMHAS is not permitted to do any of the following:

- (i) Except in an emergency situation, give an ADAMH Board approval to operate a facility or provide an addiction or mental health service unless the Director determines that it is not feasible to have the Department operate the facility or provide the service.
- (ii) Give an ADAMH Board that serves a district with a population of less than one hundred thousand approval to operate a facility or provide an addiction or mental health service unless the Director determines that the Board will provide greater administrative efficiency and more or better services than would be available if the Board contracted with a private or public facility or community addiction or mental health services provider.
- (iii) Give an ADAMH Board approval to operate a facility previously operated by a person or other government entity, or to provide a community addiction or mental health service previously provided by a community addiction services or mental health provider, unless the Board has established to the Director's satisfaction that the person, other government entity or provider cannot effectively operate the facility or provide the service or that the person, other government entity or provider has requested that the Board take over operation of the facility or provision of the service.

The Director must review and evaluate the ADAMH Board's operation of a facility and provision of addiction or mental health services.

ADAMH Board Provision of Administrative Services and Direction

O.R.C. 340.037(E) prohibits ADAMH Boards from administering or directing the daily operation of any facility or community addiction or mental health provider. It does, however, authorize a facility or provider to contract with an ADAMH Board to receive administrative services or staff direction from the Board under the direction of the governing body of the facility or provider.

MONITORING AND EVALUATION

Housing

A wide range of housing, including recovery housing, is required to be included in each ADAMH Board's community-based continuum of care under O.R.C. 340.032(A). O.R.C. 340.03(A)(12) requires ADAMH Boards to ensure that housing built, subsidized, renovated, rented, owned, or leased by the Board or a community addiction or mental health services provider has been approved as meeting minimum fire safety standards and that persons residing in the housing have access to appropriate and necessary services, including culturally relevant services, from a community addiction or mental health services provider. This does not apply to residential facilities licensed pursuant to O.R.C. 5119.34.

Provider Certification

O.R.C. 340.03(A)(3) authorizes ADAMH Boards to provide input and recommendations to OhioMHAS when an application for certification or the renewal of certification has been submitted by a provider if the Board is aware of information that would be beneficial to the Department's consideration of the matter.

Certification Compliance

ADAMH Boards are required to cooperate with the Director of OhioMHAS in visiting and evaluating whether the certified services and supports of a community addiction or mental health services provider satisfy the certification standards established by rules adopted under O.R.C. 5119.36. O.R.C. 340.03(A)(4)

Provider Investigations

Upon request of an ADAMH Board to investigate a provider, OhioMHAS must initiate an investigation within 10 days of the request. If OhioMHAS initiates an investigation of a provider for any other reason, it must notify the Board of the investigation of a provider for any other reason, it must notify the Board not later than three business days after the investigation begins. Upon request of the ADAMH Board, OhioMHAS must provide information specifying the status of the investigation and the final disposition. O.R.C. 5119.36

O.R.C. 340.03(A)(3) authorizes ADAMH Boards to provide input and recommendations when a provider is being investigated by OhioMHAS and the Board is aware of information that would be beneficial to the Department's consideration of the matter.

Program Audits

ADAMH Boards are required to conduct program audits, in accordance with criteria established under O.R.C. 5119.22(D), that review and evaluate the quality, effectiveness, and efficiency of addiction and mental health services and supports provided by community addiction and mental health services providers under contract with the Board and submit its findings and recommendations to OhioMHAS. O.R.C. 340.03(A)(6) OhioMHAS is required under O.R.C. 5119.22(D) to take into account the findings and recommendations submitted by an ADAMH Board when reviewing the community-based continuum of care in each service district.

Investigate Abuse or Neglect Complaints

ADAMH Boards are required to investigate, or request another agency to investigate, any complaint alleging abuse or neglect of any person receiving services from a community addiction

or mental health services provider, or of a resident receiving addiction services or with mental illness or severe mental disability residing in a residential facility licensed under O.R.C. 5119.34. If the investigation substantiates the charge of abuse or neglect, the Board must take whatever action it determines is necessary to correct the situation, including notification of the appropriate authorities. Upon request, the Board must provide information about such investigations to OhioMHAS. O.R.C. 340.03(A)(2).

In addition, O.R.C. 340.05 requires that when a Board receives a complaint or report from a community addiction or mental health services provider alleging abuse or neglect of an individual with mental illness or severe mental disability, or an individual that is receiving addiction services, who resides in a facility licensed under O.R.C. 5119.34 that is located in the Board's service district, the Board must report the complaint to the Director of OhioMHAS for the purpose of the Director conducting an investigation into the allegations. The Board is authorized to enter the facility with or without the Director and, if the health and safety of a resident is in immediate danger, take any necessary action to protect the resident. The Board's actions must not violate any resident's rights specified in O.R.C. 5119.34 and the Board must immediately report its actions to the Director.

Client Complaints and Grievances

ADAMH Boards are required to ensure that the rights of persons receiving any elements of their community-based continuums of care are protected and that they are able to utilize grievance procedures applicable to the elements. 340.032(B) and (C)

Each ADAMH Board must establish a procedure for addressing client rights complaints in accordance with the requirements of O.A.C. 5122:2-1-02.

O.R.C. 340.08 requires Boards to submit to the Department a report summarizing complaints and grievances received by the Board concerning the rights of persons seeking or receiving services or supports, investigations of complaints and grievances, and outcomes of the investigations. O.R.C. 340.08(E)

Reportable Incidents

Providers are required to forward each reportable incident required to be reported under O.A.C. 5122-26-13 to both OhioMHAS and ADAMH Board of residence for the person involved within 24 hours of discovery, exclusive of weekends and holidays. In addition, an incident data report, as described in the rule, must be submitted to OhioMHAS and the ADAMH Boards(s) with which the provider has entered into a contract to provide services every six months.

Forensic Monitoring

In conjunction with OhioMHAS, ADAMH Boards are required to operate a coordinated system for tracking and monitoring persons found not guilty by reason of insanity and committed pursuant to O.R.C. 2945.40 who have been granted a conditional release and for persons found incompetent to stand trial and committed pursuant to O.R.C. 2945.39 who have been granted a conditional release. The system must do all of the following: (i) centralize responsibility for the tracking of those persons (ii) provide for uniformity in monitoring them and (iii) provide a mechanism to allow prompt rehospitalization, reinstitutionalization, or detention when a violation of the conditional release or decompensation occurs. O.R.C. 340.08(D)

Provider Financial Audits

At least annually, ADAMH Boards are required to audit all programs, addiction and mental health

services, and recovery supports provided under contract with the Board in accordance with O.A.C. 5122:1-5-01 and any guidelines established by OhioMHAS. O.A.C. 5122:1-5-01 requires all certified providers that receive funds that originate from or pass through an ADAMH Board or OhioMHAS to have an annual independent financial audit. A copy of the audited financial statements, the audit report, and any management letters issued by the independent accounting firm, must be submitted to OhioMHAS within 180 days after the end of the state fiscal year with a copy sent to the ADAMH Board in which the provider's primary place of business is located.

RESIDENTIAL FACILITIES

The duties of ADAMH Boards described in this section are in addition to those imposed by any additional rules of OhioMHAS pertaining to residential facilities.

Residential Facility Applications

OhioMHAS is required pursuant to O.R.C. 5119.34(E) to send applications for residential facility licenses to the ADAMH Board serving the county in which the person operates or seeks to operate the facility. The Board must review each application and provide to OhioMHAS any information about the applicant or the facility that the Board would like the Department to consider in reviewing the applications. 340.03(A)(5)

Required Residential Facility Notifications to ADAMH Boards

For each resident with a mental illness or severe mental disability, operators of residential facilities licensed by OhioMHAS are required to notify the ADAMH Board serving the county in which the facility is located of the resident's placement in the facility within seven days of the resident's admission. O.A.C. 5122-30-23

When residents of a residential facility are receiving mental health or addiction services, OhioMHAS rules require facility operators to notify the local ADAMH Board of a change to unlicensed status, probationary license status or the movement of current residents of the facility to a facility issued an interim license. OhioMHAS is also required to notify the local ADAMH Board when it terminates the license of a residential facility and specify the date of termination of the license. O.A.C. 5122-30

For residents with mental illness, facility operators are required to forward each reportable incident required to be reported under O.A.C. 5122-30-16 to the resident's ADAMH Board of residence and the ADAMH Board whose service district includes the facility within 24 hours of discovery, exclusive of weekends and holidays.

Class one and two facilities are required to give a resident's ADAMH Board of residence written notice of a proposed transfer or discharge thirty days in advance or, in an emergency, as soon as possible.

Residential Facility Inspections and Access

An ADAMH Board is permitted to inspect any licensed residential facility located in its service district. O.R.C. 340.031(A) Additionally, O.R.C. 5119.34(L) authorizes employees of ADAMH Boards to enter a residential facility at any time when a resident of the facility is receiving services from a community mental health services provider under contract with that ADAMH Board or another ADAMH Board. For class one facilities, ADAMH Boards that provide funding for a resident's community mental health services are authorized to inspect the facility pursuant to O.A.C. 5122-30-16. ADAMH Board representatives may also enter a facility when investigating allegations of abuse or neglect in accordance with O.R.C. 340.05.

CONTRACTS

This section addresses requirements for all contracts entered into by ADAMH Boards as well as those specific to contracts with providers of mental health and addiction services and supports and for the operation of licensed facilities.

General Contract Requirements

Form and Procedure

Every contract entered into by an ADAMH Board must be reduced to writing and formally executed. It should be clear and definite as to each item, including the duties of all parties, the amount of each payment to be made (or the basis upon which each payment is to be calculated), the total amount to be expended under the contract, any pre-conditions to payment and the time at which payments are to be made. If any other documents, programs, or plans are incorporated by reference into the contract, they should be clearly identified and, if they cannot be attached to the contract, their location should be clearly stated in the contract.

All contracts should be approved as to form by the legal advisor to the Board. If it proves impractical to have contracts approved individually, consideration should be given to the preparation of a standard contract, approved by the legal advisor, which may be used in most instances. Deviations from this standard contract may then be approved by the legal advisor on an individual basis.

Certification

O.R.C. 5705.41(D) requires that before any contract involving the expenditure of funds is entered into, it must be presented to the county auditor serving as fiscal officer for the Board for certification that the amount required to meet the obligation or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund, free from encumbrances. This certification need only be signed by the county auditor. Any contract entered into without the required certification is void and a warrant cannot be issued in payment of any amount due.

Where a contract is entered into on a per unit basis, the Board must make an estimate of the total amount to become due upon such contract, which estimate shall be certified in writing to the county auditor. Such a contract may be entered into if the appropriation covers such estimate, or so much thereof as may be due during the current year. In such a case the certificate of the county auditor based upon the estimate is sufficient compliance with the law requiring a certificate.

For more on certifications, refer to the *Expenditure of Funds* heading in the *Administration and Finance* section.

Adoption and Execution

After certification by the fiscal officer, the contract must be formally adopted by resolution of the governing board and duly entered upon its journal of proceedings. The resolution should designate by name those representatives of the Board who are authorized to sign the contract on behalf of the governing board. The contract should be signed by authorized representatives of all parties to the contract, and an executed copy of the contract should be retained by all parties.

O.R.C. 340.03(F) provides an exception to the requirement that the prior approval of the governing board be obtained prior to its execution by the executive director. The exception allows a governing board to approve a procedure, rule, standard, or bylaw that authorizes the executive director to execute “standard service contracts pertaining to the board’s operations” and “emergency contracts for clinical services or recovery supports,” for an amount of \$25,000 or less, without the governing board’s prior approval. The statute requires the governing board to define the scope of “standard service contracts pertaining to the board’s operations” and “emergency contracts for clinical services or recovery supports” in the delegation of authority. The Board must also determine the maximum amount of contracts that may be executed by the executive director, up to the statutory limit of \$25,000. The exception also requires that each contract executed by the executive director under this delegation of authority be disclosed at the next governing board meeting and the disclosure recorded in the meeting minutes.

It is suggested that the Board retain the original copies of all contracts in a location where they are easily accessible when needed.

Contracts for Behavioral Health Services, Supports and Facilities

Pursuant to O.R.C. 340.036(A), ADAMH Boards must enter into contracts with public and private facilities for the operation of facility services and with community addiction and mental health services providers for the provision of addiction and mental health services and recovery supports.

Boards may only contract with residential facilities that require licensure under O.R.C. 5119.34 if the facility is so licensed and with community addiction and mental health services providers to provide certifiable services and supports that require certification under O.R.C. 5119.36 if the services and supports are so certified.

ADAMH Boards may contract with a government entity, for-profit entity, or non-profit entity, including those that are faith-based, for the provision of services and recovery supports. As part of the contracting process, a Board must consider the cost-effectiveness and quality of services provided, continuity of care, and the Board may review cost elements, including salary costs, of the services to be provided. A utilization review process may be established as part of the contract for services in the way that is most effective and efficient in meeting local needs. Ohio’s competitive bidding requirements do not apply to contracts entered into by ADAMH Boards for the operation of facilities and the provision of mental health and addiction services and supports.

Terms

The principal authority of ADAMH Boards consists of their power, pursuant to O.R.C. 340.036, to contract for the provision of mental health and addiction services and recovery supports and the operation of licensed facilities. As the terms and conditions of such contracts may, to a significant extent, be determined, if not dictated, by the Board, careful consideration should be given to the contracting process.

The Board is vested with broad authority in specifying the terms of contracts, as long as all expenditures are for public purposes within the general authority of the Board to contract for the operation of residential facilities and the provision of mental health and addiction services and supports.

An audit of the Board will include a review of the form and procedural adoption and execution of contracts, and to the extent required by circumstances, an evaluation of the effectiveness with which the Board exercises its contracting authority. The following is a summary of contractual terms which should be addressed in each contract:

Property - There is no statutory requirement that property purchased with public funds be titled in the name of the Board; however, it is recommended that all contracts with contract providers include a provision that the title to all tangible personal property identifiable as purchased with public funds be in the name of the Board, and that if the relationship between the Board and contract agency is terminated, such property be returned to the Board. If the property is purchased in part with Board funds and in part with provider funds, the contract must provide for a settlement with the provider of the proportionate amount of the market value of the property. Property purchased with provider funds, the expense of which is not reimbursed or otherwise supported by the Board, will, of course, remain with the agency. Boards may also lease tangible personal property to contract providers; however, if the relationship between the Board and the contract provider is terminated, such property must be returned to the Board or purchased by the provider for the market value of the property.

It will be necessary for both the Board and its contract providers to maintain a detailed inventory of all such property, as described under the *Inventory* heading in the Administration and Finance section of the Handbook.

Civil Rights Provisions - O.R.C. 340.12 states that community addiction and mental health services providers under contract with a Board shall not discriminate in the provision of services or supports under its authority, in employment, or under a contract, on the basis of race, color, religion, ancestry, military status, sex, age, disability, or national origin. In addition, pursuant to O.R.C. 5119.25, the Director of OhioMHAS may withhold state and federal funds from a Board that denies available services based on those same classes. Therefore, it is recommended that each contract include a provision prohibiting discrimination, with the ramification of such discrimination being cancellation of the contract.

Client Rights - Since OhioMHAS requires that all providers and facilities under contract with Boards have a written policy addressing the rights of clients and the provider's grievance procedures, it is recommended that each contract include a provision requiring that the provider develop such policies.

Method of Payment - ADAMH Boards must approve fee schedules and related charges, or adopt a unit cost schedule or other methods of payment for services and supports provided by community addiction or mental health services providers under contract with the Board, in accordance with guidelines issued by OhioMHAS and as necessary to comply with state and federal laws pertaining to financial assistance. O.R.C. 340.03(A)(8)

Boards must ensure that payments to providers for services provided do not include reimbursement for expenses eligible for payment by federal grants, third-party payors, or income from client fees. O.A.C. 5122:1-3-01

Advanced funding may be used to avoid cash flow problems, but the terms and conditions of each funding advance must be specifically provided for in the contract. Any expenditures to a contract agency which are not pursuant to a properly adopted contract may result in finding for recovery directed against the contract provider, members of the governing board, and other officials who authorized or participated in authorizing payment, as circumstances warrant.

Non-Renewal of Current Contract or Substantial Changes Proposed for Subsequent Contract

If either party to a contract entered into under O.R.C. 340.036 proposes not to renew the contract or proposes substantial changes in contract terms, the other party must be given written notice at

least one hundred twenty (120) days before the expiration date of the contract. During the first sixty (60) days of the one hundred twenty-day period, both parties must attempt to resolve any dispute through good faith collaboration and negotiation in order to continue to provide services to persons in need.

If the dispute has not been resolved sixty (60) days before the expiration date of the contract, either party may notify OhioMHAS of the unresolved dispute. The Director may require both parties to submit the dispute to a third party with the cost to be shared by the Board and the facility or provider. The third party must issue to the Board, the facility or the provider, and the Department, recommendations on how the dispute may be resolved twenty (20) days prior to the expiration date of the contract, unless both parties agree to a time extension. The procedures set forth in rule by OhioMHAS must be followed in the dispute resolution process.

For more information, see *Contracts* in the *Frequently Asked Questions* section of the Appendix.

PROVISION OF INFORMATION

Annual Report

ADAMH Boards must submit to the Director of OhioMHAS and the county commissioners of the county or counties served by the Board, and make available to the public, an annual report of the services under the jurisdiction of the Board, including a fiscal accounting. O.R.C. 340.03(A)(9)

O.R.C. 5119.24 requires the annual report submitted to OhioMHAS to specify how the Board used funds allocated to it for administrative functions related to its continuum of care in the year preceding the report's submission. "Administrative function" refers to a function related to continuous quality improvement, utilization review, resource development, fiscal administration, general administration, and any other function related to administration that is required by Chapter 340 of the Revised Code.

Community Behavioral Health Information System

ADAMH Boards are required to submit information requested by OhioMHAS for its community behavioral health information system in the form and manner and in accordance with time frames prescribed by OhioMHAS. Information collected by the Department may include all of the following: information on services provided, financial information regarding expenditures of federal, state, or local funds and information about persons served. O.R.C. 5119.22

Information Required by OhioMHAS

In addition to any specific requirements for submission of information to OhioMHAS, O.R.C. 340.08(H) states that Boards are required to submit other information to OhioMHAS as is reasonably required for purposes of the Department's operations, service evaluation, reporting activities, research, system administration, and oversight.

Court-Ordered Alcohol and Other Drug Abuse Treatment

ADAMH Boards must submit on an annual basis the following lists to the clerk of the probate court in each county served by the Board: (i) a list of all hospitals in the counties served by the Board that are able and willing to take respondents ordered to undergo seventy-two hours of treatment and observation who present an imminent threat of danger to self, family, or others as a result of alcohol and other drug abuse and (ii) a list of hospitals and treatment providers in the counties served by the Board that are able and willing to provide court-ordered treatment for alcohol and other drug abuse. O.R.C. 5119.97.

COLLABORATIVE RELATIONSHIPS

ADAMH Boards are required to promote, arrange, and implement working agreements with public and private social agencies and judicial agencies. O.R.C. 340.03(A)(1)(d).

Boards are also permitted to collaborate with other entities for reasons related to their statutory purposes. Many collaborate with one another to form consortiums, hubs, and collaboratives in order to accomplish the common goals of the member Boards. The following collaborations are governed by statute.

Councils of Governance

ADAMH Boards may form Councils of Governance (COGS) with other political subdivisions, including other Boards, to assist one another and work towards common goals. O.R.C. Chapter 167.

Services To/From Other Governmental Entities

ADAMH Boards, as political subdivisions, may enter into an agreement with another political subdivision or a state agency whereby one agrees to exercise any power, perform any function, or render any service for the other (that the receiving entity is otherwise legally authorized to exercise, perform, or render). If a power, function, or service is to be performed within a political subdivision that is not a party to the agreement, the written consent of that political subdivision must first be obtained. O.R.C. 9.482.

Continuity of Care Agreements

O.R.C. 340.08(C) requires Boards to enter into a continuity of care agreement with the state institution operated by OhioMHAS and designated as the institution serving the district encompassing their service district. The continuity of care agreement must outline the Department's and the Board's responsibilities to plan for and coordinate with each other to address the needs of board residents who are patients in the institution, with an emphasis on managing appropriate hospital bed day use and discharge planning. The agreement is not permitted to require the Board to provide services other than those on the list of services submitted by the Board and approved by OhioMHAS pursuant to O.R.C. 340.08(B).

Hospital Facility Agreements

An ADAMH Board may enter into an agreement with “hospital agencies”, for purposes related to its statutory authority, for the acquisition, construction, reconstruction, rehabilitation, remodeling, renovating, enlarging, equipping, and furnishing of hospital facilities, or the management, operation, occupancy, use, maintenance, and repair of hospital facilities, or for participation in programs, projects, activities, and services useful to, connected with, supplementing, or otherwise related to the services provided by, or the operation of, hospital facilities operated by one or more participating hospital agencies, including any combination of such purposes.

ADAMH Boards are considered to be a “public hospital agency” or “hospital agency” for the purposes of such agreements and this section of the Ohio Revised Code. The purpose of such agreements is to “promote the public purpose of better providing for the health and welfare of the people of the state by enhancing the availability, efficiency, and economy of hospital facilities and the services rendered thereby, by providing for cooperation of hospital agencies in the utilization of shared facilities and services to obtain economies in operation and more effective health service, facilitating participation of hospital agencies in federal financial assistance provided by Title IV of

the ‘Public Health Service Act’ ... and by other federal programs for assistance in meeting the costs of hospital facilities or the financing thereof, providing efficient operation of hospital facilities through leasing to hospital agencies and facilitating the financing of hospital facilities to be available to or for the service of the general public...”. O.R.C. 140.03.

Law Enforcement Trust Fund

Pursuant to O.R.C. 2981.13, law enforcement agencies that have established a law enforcement trust fund with the proceeds from seized or forfeited property are required to receive and consider advice on appropriate community preventive education programs from the county’s ADAMH Board or through appropriate community dialogue when determining how to use the portion of funds from law enforcement trust funds that must be used in connection with community preventive education programs.

COMMUNITY ROLES

ADAMH Boards often participate in and collaborate with other agencies and organizations in their service districts such as coalitions, diversion programs, disaster planning groups, and school-related entities. In addition to organizations and agencies that Boards choose to collaborate with, the following are statutorily created groups that permit or require ADAMH Board representation:

Suicide Fatality Review Boards - If a county establishes a suicide fatality review board to review deaths occurring by suicide, the executive director of the ADAMH Board, or their designee, must serve on the board. O.R.C. 307.462

Drug Overdose Fatality Review Boards – If a county establishes a drug overdose fatality review board to review drug overdose deaths and opioid-involved deaths, the executive director of the ADAMH Board, or their designee, must serve on the board. O.R.C. 307.632

Local Corrections Planning Board - If a county establishes a local corrections planning board, the Executive Director of the ADAMH Board serving that county, or their designee, must serve on that board. O.R.C. 5149.34

Child Fatality Review Board - Executive Directors of ADAMH Boards, or their designees, must serve on child fatality review boards for each county in their service district. O.R.C. 307.622

County Family and Children First Council - Executive Directors of Boards must serve on the county family and children first council for their service district. The Executive Director of a multi-county Board may designate a person to participate on the council. A Board may also be designated as the administrative agent for a county council. O.R.C. 121.37

County Family Services Planning Committee - Boards may be appointed by the board of county commissioners to the county family services planning committee for the counties in a Board’s service district. O.R.C. 329.06

COURT-ORDERED COMMITMENTS AND HOSPITALIZATIONS

Ohio Revised Code Chapter 5122 governs the commitment and hospitalization of persons with a mental illness who require treatment in a psychiatric hospital. ADAMH Boards have numerous duties in regards to such persons and processes. The following provides a detailed overview of Chapter 5122 but Boards should review the statute in its entirety to ensure compliance with its requirements.

Person with a Mental Illness Subject to Court Order

R.C. 5122.01 defines “person with a mental illness subject to court order” as a person with mental illness to whom, because of the person’s illness, *at least one of the following applies*:

1. Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
2. Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
3. Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community;
4. Would benefit from treatment for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person;
5. Would benefit from treatment as manifested by evidence of behavior that indicates *all of the following*
 - i. The person is unlikely to survive safely in the community without supervision, based on a clinical determination.
 - ii. The person has a history of lack of compliance with treatment for mental illness and one of the following applies:
 - At least twice within the 36 months prior to the filing of an affidavit seeking court-ordered treatment of the person, the lack of compliance has been a significant factor in necessitating hospitalization in a hospital or receipt of services in a forensic or other mental health unit of a correctional facility. The 36-month period must be extended by the length of any hospitalization or incarceration of the person that occurred within those 36-months.
 - Within the 48 months prior to the filing of an affidavit seeking court-ordered treatment of the person, the lack of compliance resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others. The 48-month period must be extended by the length of any hospitalization or incarceration of the person that occurred within those 48-months.
 - iii. The person, because of the person's mental illness, is unlikely to voluntarily participate in necessary treatment.
 - iv. In view of the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in a substantial risk of serious harm to the person or others.

(NOTE: If only the criteria in number 5 applies to a person and the criteria of numbers 1-4 do not, the person is only subject to court-ordered outpatient treatment and not hospitalization)

Involuntary Admission Procedures:

If a person is believed to be a “person with a mental illness subject to court order” refuses to obtain mental health treatment voluntarily, the following procedures are available to initiate involuntary commitment proceedings, which may result in a probate court ordering inpatient or outpatient mental health treatment.

Emergency Admission (Pink Slip Procedure):

The emergency admission, or pink slip, procedure can be initiated by a psychiatrist, licensed clinical psychologist, licensed physician, clinical nurse specialist certified as a psychiatric-mental health CNS,

certified nurse practitioner certified as a psychiatric-mental health NP, health officer, police officer, sheriff, or parole officer (“transporting official”) that: (1) has reason to believe a person meets the criteria for a “person with a mental illness subject to court order” AND (2) represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination, by taking into custody and transporting the person to a hospital or community mental health services provider for examination.

A written statement, known as an “application for emergency admission” or more commonly a “pink slip”, must be completed and provided to the hospital or services provider detailing the circumstances under which the person was taken into custody and the reasons for the transporting official’s belief.

The person must be examined within twenty-four hours of arrival at the facility. After examination, if the chief clinical officer believes that the person is not a person with a mental illness subject to court order, the person must be released or discharged immediately unless a court has issued a temporary order of detention applicable to the person. If the chief clinical officer believes that the person does meet the criteria for person with a mental illness subject to court order, the person may be detained for up to three court days following the day of the examination. During that time the chief clinical officer must either file an affidavit for judicial hospitalization or admit the person as a voluntary patient. If neither of those actions is taken by the end of the three-day period, and a court has not otherwise issued a temporary order of detention applicable to the person, the person must be discharged. O.R.C. 5122.10

When a person is taken into custody and transported pursuant to this process, the law requires that “every reasonable and appropriate effort be made to take a person into custody in the least conspicuous manner possible”. The person taking the individual into custody is required to explain to following: the name and professional designation and affiliation of the person taking custody; that the custody-taking is not a criminal arrest; and that the person is being taken for examination by mental health professionals at a specified mental health facility identified by name.

Judicial Admission (Affidavit Procedure)

Proceedings for a person that meets the criteria for “person with a mental illness subject to court order” may also be commenced by the filing of an affidavit in the manner prescribed by OhioMHAS and on the form prescribed in ORC 5122.111 with the probate court in the county where the person resides by any person that has reliable information, or actual knowledge, that another individual is a person with mental illness subject to court order.

The affidavit must include a statement of alleged facts sufficient to indicate probable cause that the person meets the criteria and the specific category or categories of “subject to court order” that are believed to apply to that person. The affidavit may be accompanied by, or the court may require that it be accompanied by, certificates signed by a licensed psychiatrist, or both a licensed clinical psychologist and licensed physician, stating that the professional has examined the person and is of the opinion that the person with a mental illness subject to court order. If the person has refused to be examined by a licensed psychiatrist, or a licensed clinical psychologist and licensed physician, a written statement must also be provided by the filer of the affidavit, under oath, indicating that the person has refused to submit to such an examination.

If upon review, the probate court judge or magistrate has probable cause to believe that the person named in the affidavit is a person with a mental illness subject to court order, a temporary order of detention may be issued ordering any health officer, police officer, or sheriff to take into custody and transport that person to a hospital, or other facility permitted by statute, pending examination or hearing. O.R.C. 5122.11

Probate Court Proceedings

If upon receipt of an affidavit to initiate probate court proceedings, the court has probable cause to believe that the person named in the affidavit is a person with a mental illness subject to court order the judge will schedule a hearing. If not, the affidavit will be dismissed. O.R.C. 5122.11

The court must send written notice of the hearing and a copy of the affidavit to the person who is the subject of the hearing; the person's legal guardian and spouse, if applicable; the parents of a minor; the person who filed the affidavit; a designated person or adult next of kin; legal counsel; the hospital or facility director; and the ADAMH Board or its designated community mental health services provider.

Initial Hearing

An initial hearing must be conducted within five court days from the day on which the person is detained, or an affidavit is filed, whichever occurs first, to determine whether or not the respondent is a person with a mental illness subject to court order. If the person does not have an attorney, the court will appoint one.

If the court does not find that the respondent does not meet the criteria, the person must be immediately discharged and all records of the proceedings must be expunged. If the court finds that the respondent is a person with a mental illness subject to court order, the court may issue an interim order of detention and a full hearing must be held within 30 days. O.R.C. 5122.141

Full Hearing

At the full hearing, the ADAMH Board's attorney and the person's attorney will present evidence. The court must decide if there is clear and convincing evidence that the person is a person with a mental illness subject to court order. If not, the person must be immediately discharged. If so, the court must order the person to a hospital or other facility for a period of 90 days. Such a facility must be the least restrictive setting available that is consistent with the person's treatment goals. A person that only meets the fifth standard in the definition of "person with a mental illness subject to court order", above, is not subject to hospitalization and may only be committed to outpatient treatment.

At the expiration of the 90 days, an application for continued treatment may be filed if there is reason to believe that the person still meets the criteria for court-ordered treatment. Another hearing will be held to determine if the person is still a "person with a mental illness subject to court order". O.R.C. 5122.15.

Court-Ordered Outpatient Treatment

For individuals who are committed to an ADAMH Board, or a Board-designated services provider, the Board is responsible for determining the appropriate treatment for a person receiving court-ordered treatment in an outpatient setting. ORC 5122.15(F)

When a Board receives a notice that a court will be holding a hearing regarding the decompensation or failure to comply with a treatment plan of a person receiving court-ordered outpatient treatment, the Board is responsible for submitting a report to the court with a plan for alternative treatment or for recommending that the court discontinue the court-ordered treatment. ORC 5122.15(N)

Notification of Board of Residence

Upon application for the admission of a person pursuant to emergency or judicial procedures, the chief clinical officer of a hospital must immediately notify the ADAMH Board of the patient's county of residence. O.R.C. 5122.05

Voluntary Admissions

Voluntary admission to a public hospital must be authorized by the Board located in the person's county of residence. O.R.C. 5122.02. The Board must also be notified, when possible, of the pending release of a voluntarily admitted patient. Notification must come from the chief clinical officer of the public hospital before the patient is released but after the patient is informed that the Board will be notified. O.R.C. 5122.03.

Health Officers

ADAMH Boards may designate individuals as “Health officers”. Health officers are one of the categories of professionals authorized to make the determination to initiate the emergency admission, or pink slip procedure, described above. O.R.C. 5122.01

Application for Services

Persons who have been hospitalized or committed may apply to the Board of their county of residence at any time for the services included in the Board’s continuum of care. O.R.C. 5122.231.

Method for Evaluating Referrals and Affidavits

ADAMH Boards must establish a method for evaluating referrals for court-order treatment and affidavits filed pursuant to O.R.C. 5122.11 in order to assist the probate division of the court of common pleas in determining whether there is probable cause that a respondent is subject to court-ordered treatment and whether alternatives to hospitalization are available and appropriate. O.R.C. 340.031(A)(10)

Designation of Services, Provider or Facility

O.R.C. 340.03(A)(11) requires ADAMH Boards to designate the treatment services, provider, facility, or other placement for each person involuntarily committed to the Board. The Board must provide the least restrictive and most appropriate alternative that is available for any person involuntarily committed to it and must assure that the services available in its continuum of care are available to severely mentally disabled persons residing within its service district.

Procedures for Authorizing Payment

The Board must establish a procedure for authorizing payment for services to those involuntarily committed to the Board, which may include prior authorization in appropriate circumstances. O.R.C. 340.03(A)(11)

Overview of ADAMH Board Responsibilities under Chapter 5122

The following list is intended to provide a useful overview of ADAMH Board responsibilities pursuant to Chapter 5122. Please see the Ohio Revised Code for additional information about each of these requirements.

- Designate Health Officers. 5122.01(J)
- Provide services for a person whose residence is in dispute while residence is being determined and for a person in an emergency situation. 5122.01(S)
- Authorize voluntary admissions. 5122.02
- Receive notice from a public hospital before a voluntary patient is released. 5122.02
- Receive notice from the CCO of a hospital when admission for resident of Board area applied for under emergency or judicial procedures. 5122.05
- Promptly assess residents of Board area when notice received from hospital CCO of application for emergency or judicial admission (unless the Board or its designated agency has already performed an assessment) to assist the hospital in determining whether the patient is subject to involuntary hospitalization and whether alternative services are available. (*Board or Board-designated provider*) 5122.05
- Receive written notice of hearing from court after Affidavit of Mental Illness received by court for resident of Board area. (*Board or Board-designated provider*) 5122.12
- Review Affidavits of Mental Illness received from court and other information to assist the court in determining whether the person is subject to court-ordered treatment and whether alternatives to

hospitalization are available (unless the services provider or Board has already performed such screening) and promptly make a report to the court. *(Board or Board-designated provider)* 5122.13

- Designate attorney to present the case demonstrating that a person is a person with a mental illness subject to court order and deal with all subsequent court hearings. Designated attorney receives information about court proceedings and changes in person's status. 5122.15(A)
- Receive court-ordered commitments. *(Board or Board-designated provider)* 5122.15(C)
- Receive updates about the progress of a person with his/her treatment plan when the person is committed to an entity or person other than the Board or a state hospital and the court order requires that person or entity to provide such information to the Board. *(Board or Board-designated provider)* 5122.15(D)
- Receive reports regarding the admission of a resident pursuant to a judicial proceeding from the CCO of the entity admitting the person, within ten working days of the admission. 5122.15(I)
- Comply with certain requirements before placing an un-consenting person in an inpatient setting from a less restrictive placement. *(Board or Board-designated provider)* 5122.15(L)
- Comply with certain requirements before moving a respondent from one residential placement to another. *(Board or Board-designated provider)* 5122.15(M)
- Submit report to court with a plan for alternative treatment or recommend that the court discontinue the court-ordered treatment, upon receiving notice that the court will hold a hearing regarding the decompensation or failure to comply with a treatment plan of a person receiving court-ordered outpatient treatment. 5122.15(N)
- Determine the appropriate treatment for a person receiving court-ordered treatment in an outpatient setting that is committed to the Board or a Board-designated services provider. *(Board or Board-designated provider)* 5122.15(F)

** Note: Actions/requirements marked with "Board or Board-designated provider" denote sections of Chapter 5122 that specifically reference an action being performed by the Board or its designated provider(s). This does not preclude Boards from delegating other Chapter 5122 actions/requirements to their designated providers as well.*

PART IV

**PUBLIC OFFICIALS
AND
EMPLOYEES**

PUBLIC OFFICIALS AND EMPLOYEES

ADAMH Boards are “public offices” under Ohio law and Board employees and governing board members are “public officials”. Therefore, in addition to the provisions of Ohio law that are specific to ADAMH Boards, their employees and their governing board members, the requirements of Ohio law that apply to public offices and public officials must be adhered to as well.

CIVIL SERVICE SYSTEM

Chapter 124, Revised Code, establishes the Civil Service System, which governs the appointments, employment, and removal of employees of the State, County, City, and other political subdivisions.

ADAMH Boards are employers of persons governed by the Civil Service Laws. O.R.C. Section 124.01(A) defines “Civil Service” as follows:

Civil Service includes all *offices and positions of trust or employment in the service of the State and the Counties, cities, city health districts, general health districts, and city school districts thereof.* [Emphasis added]

Thus, employees of Boards may not be appointed, removed, laid off, suspended, promoted, reinstated, or reduced, other than as provided in O.R.C. Chapter 124, or pursuant to the rules promulgated thereunder by the State Department of Administrative Services or as provided in applicable collective bargaining agreements pursuant to O.R.C. Chapter 4117, except as otherwise noted below.

Section 124.11, Revised Code, provides that all employees in the civil service are either in the unclassified or the classified service.

O.R.C. 124.11(A)(18) states that the executive directors, deputy directors, and program directors of ADAMH Boards and the secretaries of those executive directors, deputy directors, and program directors are in the unclassified service. All civil service employees not specifically placed in the unclassified service by Section 124.11 are automatically in the classified service. The status of unclassified employees differs from that of classified employees. Unclassified employees serve at the pleasure of the appointing authority and may be terminated at will for any cause or for no cause. Unclassified employees are appointed without taking civil service examinations and may take part in partisan political activity.

EMPLOYEE DATABASE

As public offices, Boards are required to maintain a database or a list that includes the name of all employees they employ. The database or list is a public record and must be made available upon receipt of a public record’s request for such information. O.R.C. 149.434.

COMPENSATION

Authority

The authority to determine the compensation of employees of a Board is vested in the Executive Director of the Board pursuant to O.R.C. 340.041(E), which provides the following authority to the Executive Director:

Employ and remove from office such employees and consultants in the classified civil service and, subject to the approval of the Board, employ and remove from office such other employees and consultants as may be necessary for the work of the Board, and fix

their compensation and reimbursement within the limits set by the salary schedule and the budget approved by the board;

Thus, the governing board is responsible for the adoption of salary and fringe benefit schedules and the Executive Director is responsible for fixing the compensation of specific employees within the limits of such schedules and the approved budget.

Retroactive Compensation

The Attorney General, in 1981 O.A.G. 81-011, overruled prior opinions which held that Article II, Section 29, Ohio Constitution, prohibited units of local government from granting retroactive increases in compensation to employees. Such increases may be granted to employees by a Board.

Overtime Compensation

Pursuant to O.R.C. 4111.03, employees are entitled to compensation at one and one-half times their normal rate of pay for hours actually worked in excess of forty (40) hours per week, subject to the exemptions of Section 7 and Section 13 of the Federal Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U.S.C. 207, 213, as amended, and effective beginning on July 6, 2022, sections 2 and 4 of the "Portal to Portal Act of 1947," 29 U.S.C. 252 and 254. Executive, administrative, and professional employees are exempted from this coverage. Specifics about the classification of positions for purposes of this exemption may be obtained from the Wage and Hour Division of the Employment Standards Administration within the United States Department of Labor. It is also important to note that both the Fair Labor Standards Act and state law permit state and local government employers to compensate employee overtime with compensatory time off instead of overtime pay under certain conditions. The advice of legal counsel should be sought regarding the application of the overtime compensation requirements.

Fringe Benefits

"Compensation" as that term is used in O.R.C. 340.04(E), with respect to ADAMH Board employees, is properly defined as including the payment of fringe benefits. 1975 O.A.G. 75-084. On the basis of this and similar decisions, it is clear that insurance benefits, holidays, and vacation benefits are within the discretionary authority of the governing board and the Executive Director to jointly determine the compensation of Board employees. 1982 O.A.G. 82-006. The Board should formally adopt policies in each of these areas.

Sick Leave

The authority of an ADAMH Board and the Executive Director to grant sick leave to employees of the Board is limited by O.R.C. 124.38, which prescribes the amount of sick leave that must be granted and regulates its use. Each employee is entitled to accrue 4.6 hours of sick leave per bi-weekly pay period, on the basis of time in active pay status. Unused sick leave may accumulate without limit and may be used by the employee, on approval of the proper administrative officer, for absence due to personal illness, pregnancy or injury, and illness, injury or death in the employee's immediate family.

The appointing authority must require an employee to furnish a written, signed statement justifying the use of sick leave, and, if medical attention is required, a certificate from a licensed physician stating the nature of the illness. A record should be kept for each employee showing the amount of sick leave accrued by pay period and the amount of sick leave used by pay period. Falsification of any written statement of a physician's certificate is grounds for disciplinary action, including dismissal.

It should be noted that O.R.C. 124.38 establishes only the minimum sick leave benefits; a Board may establish greater benefits if it desires to do so. Any increased benefits earned by the employee become vested rights. *Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31 (1980)*

EXPENSES

Governing board members and Board Executive Directors are authorized to be reimbursed for "actual and necessary expenses incurred in the performance of their official duties" pursuant to O.R.C. 340.02 and 340.032. As to public employees generally, it has been stated that:

... a public employee may lawfully be reimbursed from public funds for traveling and other personal expenses actually and necessarily incurred by the employee in the performance of public duty...

... the determination of the lawfulness of the allowance of traveling and other personal expenditures of a public officer or employee when in the performance of his public duties requires consideration of pertinent questions of fact and *is thereby reduced to a pure question of auditing...* (emphasis supplied) 1930 O.A.G. 30-2170, 1241.

Reimbursement

Expenditures for personal expenses of a public officer or an employee are limited to the reimbursement of expenses actually incurred. Before reimbursement may be made, satisfactory evidence must be presented that an expenditure was actually incurred such as a mileage log or official receipts and be presented to the Board for payment. Such evidence must consist primarily of official receipts, which should be presented in accordance with a formal policy adopted by the Board. Consideration will be given, however, in the course of an audit, to items for which it is impractical to obtain receipts, such as bridge and highway tolls, taxi fares, etc. In the event it is more practical, the Board may adopt a policy whereby an officer or employee is given an advancement. Arrangements may be made where upon presentation of receipts, the officer or employee is reimbursed for any expenses in excess of the advancement or return the excess advanced funds. Each Board should develop a policy regarding the reimbursement of expenses.

Necessary Expenses

Expenditures, to be eligible for reimbursement, must be necessary to the performance of the duties of the public officer or employee. For example, it is clear that gratuities are not a reimbursable expense unless they are, in fact, a mandatory service charge included in the billing. 1940 O.A.G. 40-2021.

The Auditor of State will not, as a rule, take exception to the reimbursement of governing board members' expenses for dinners at Board meetings within the district. Such expenses may be reimbursed for Board members and for employees and third parties if the Board determines that: (1) Such expenditures are necessary to a function of duty of the Board which is expressly granted by the statute or is necessarily implied therefrom; and (2) Such expenditures serve as a valid public purpose. 1982 O.A.G. 82-006.

Mileage

Both governing board members and employees may be reimbursed for the use of private automobiles on public business, with the limitation that mileage to and from home and work is not reimbursable to employees. Governing board members may be reimbursed for mileage for legitimate Board functions both within and beyond the district. Reimbursement must be at a reasonable rate as determined by the Board.

Limitation on Amount

There is no statutory dollar limitation upon the amount that may be reimbursed to governing board members and employees, as long as expenses are otherwise reimbursable. An ADAMH Board may impose its own limitations upon the amounts which it will reimburse. Such limitations should be adopted as a formal policy of the Board. If the Board wishes, limitations for state employees, as set by the Office of Budget and Management, may be used as guidelines in formulating a policy.

Other Limitations

O.R.C. 340.02 states that governing board members must be reimbursed for actual and necessary expenses, but *only* as defined by the rules of OhioMHAS. Therefore, where any doubt exists as to the propriety of a particular item of expense, the Department should first be consulted.

One final note bear mentioning: There is *no* authority for the reimbursement of expenses incurred by a spouse, relative, or any other traveling companion of a governing board member, Executive Director, or employee. Accordingly, the Auditor of State recommends use of the following guideline. When the traveler (i.e., the board member, Executive Director, or employee who is on official business) stays at a hotel or motel, he should ask the innkeeper the rate of double occupancy and the rate for single occupancy. The rate for single occupancy should be shown on the bill and submitted with the expense voucher for reimbursement, with the difference between the single and double occupancy rates being paid by the traveler.

Similar action should be taken into account for expenses for transportation and meals, with separate billing for the traveler and the companion.

In the event that the entire expenditure is reimbursed, including the portion of the spouse, relative, etc., who is not there on Board business, a finding for recovery for the difference will be issued by the Auditor of State against the non-complying employee or officer.

Additional guidance can be found in Auditor of State Technical Bulletins 2003-05 and 2004-02, which indicate, among other things, that the expenditure of funds for alcoholic beverages is never considered to be for a proper public purpose.

OHIO PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Employees of Boards are "public employees" as defined in O.R.C. 145.01(A). 1967 O.A.G. 67-104. As such, membership in the Ohio Public Employees Retirement System is compulsory upon appointment, subject only to the exclusions from membership set forth in O.R.C. 145.02(A), and exemptions from membership set forth in O.R.C. 145.03.

Exclusions and Exemptions

Public employees contributing to or receiving disability benefits from a municipal retirement system established prior to June 30, 1938, or who have been granted a disability retirement allowance by the State Teachers Retirement System or School Employees Retirement System, or who are contributing to the Police and Fire Pension Fund or the State Highway Patrol Retirement System are excluded from membership in OPERS. O.R.C. 145.02. In addition, student employees whose employment will not exceed fifteen hundred (1500) hours in a calendar year and new employees whose employment will not exceed twenty (20) hours a week may choose to be exempt from compulsory membership by signing a written application for exemption within the first month after being employed. O.R.C. 145.03 Temporary or emergency employees whose employment will

not exceed three calendar months may also be exempted from compulsory membership upon written application within the first month after employment. O.R.C. 145.03.

Employees who are employed by a private temporary help service, or employed on a contractual basis only, or employed under a personal service contract, do not become members of OPERS. O.R.C. 145.03.

OPERS Funding and Service

OPERS is funded by employee and employer contributions and investment income and limited by appropriations by the Ohio General Assembly. Benefits include retirement, disability, death, and survivor benefits. Additional information concerning funds, benefits, and OPERS in general may be obtained from the Ohio Public Employees Retirement System, whose address is listed at the end of this Handbook.

Retirement Incentive Plan

Boards are considered to be “employing units” with respect to any retirement incentive plans that they establish for eligible employees. O.R.C. 145.297.

UNEMPLOYMENT COMPENSATION

O.R.C. 4141.242 extends unemployment compensation coverage to all employees of public entities in the State of Ohio, whether in the classified or unclassified service, full-time, part-time, or temporary, except as noted below. Public entity employers, including ADAMH Boards, are subject to the law whenever they have at least one individual in employment. They must report to the Ohio Department of Job and Family Services, the office or official responsible for the administration of their employment compensation accounts.

Exclusions from Coverage

Five general categories of employees are specifically exempted from coverage. These include publicly elected officials, members of the legislative and judiciary branches, National Guard members, and major non-tenured policy making and advisory positions. Policy-making positions involving less than eight (8) hours a week are exempt.

Funding and Benefits

Public entity employers are exempt from paying any of the administrative costs of the unemployment compensation program. They may pay for benefits through either a reimbursement or contributory method. Additional information as to funding methods, mandatory reports, and the unemployment compensation system in general should be directed to the Ohio Department of Job and Family Services, 30 E. Broad Street, Columbus, Ohio 43215-3414.

Collective Bargaining

Although ADAMH Boards are not specifically enumerated in Section 4117.01 (B), Revised Code, as a public employer, the broad definition of a public employer will allow employees working directly for a Board to be included within the Collective Bargaining Act.

CONFLICTS OF INTEREST

The subject generally referred to as "conflict of interest" includes at least three (3) areas of concern to public offices and employees. These are: (1) criminal liability for an unlawful interest in a public

contract, comprehensively treated in O.R.C. 2921.42; (2) criminal liability for violations of the Ohio Ethics Law, O.R.C. Chapter 102; and (3) the concept of incompatibility of office, judicial in origin, and a possible threat to one's eligibility for office.

Unlawful Interest in Public Contract

Criminal liability for an unlawful interest in a public contract may arise in expected circumstances. A "public official," as defined in O.R.C. 2921.01, for purposes of O.R.C. 2921.42, includes not only elected and appointed public officials, but also employees and agents of political subdivisions. Thus, both Board members and Board employees are subject to possible criminal liability under this provision of law and should be familiar with its provisions.

For purposes of O.R.C. 2921.42, "public contract" means any of the following:

- (1) The purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either; or
- (2) A contract for the design, construction, alteration, repair, or maintenance of any public property.

It is important to stress that it is not necessary that a public official be aware of the illegality of having an interest in the contract, so long as the official is aware that the interest does exist. If such an interest exists, criminal liability may result from any of the following activities:

- (1) Use of one's office to obtain a contract for oneself, a member of his family, or a business associate, or to obtain the investment of public funds for which oneself, a member of his family, or a business associate has an interest. (Note: For purposes of O.R.C. 2921.42, the term "a member of his family" includes, but is not limited to: grandparents, parents, spouse, children, whether dependent or not, grandchildren, brothers and sisters, or any person related by blood or marriage and residing in the same household. *Ethics Opinion 80-001*)
- (2) During one's tenure of office, or within one year thereafter, having any interest in a contract let by oneself, or a Board or commission on which one has served;
- (3) Having an interest in a contract for any agency in which one serves; or
- (4) Having an interest in a public contract not let by competitive bidding when required by law, and which involves more than one hundred fifty dollars (\$150.00).

The purpose of this section is to ensure that public agencies stand on at least an equal footing with others with respect to necessary business dealings. Accordingly, the section does not prohibit public servants from all dealings in which they may have some interest, no matter how remote. It prohibits only those dealings in which there is a risk that private considerations may detract from serving the public interest. Thus, in the absence of bribery or intent to defraud, a public servant, member of his family, or any of his associates are not considered as having an interest in a public contract when all of the following apply, O.R.C. 2921.42(B):

- (1) The interest is limited to ownership or control of shares of the corporation, or being a creditor of the corporation or organization, which is the contractor on the public contract, or issuer of securities which are the subject of the investment of public funds;

- (2) Shares owned or controlled do not exceed five (5) percent of those outstanding, or the amount due such person as creditor does not exceed five (5) percent of the total indebtedness of the corporation; and
- (3) Prior to the date the contract is entered into, the individual files with the governmental entity involved an affidavit of his status with the corporation or organization.

Finally, even if the requisite action and interest for criminal liability are present, this section is inapplicable to a public contract in which a private servant, a member of his/her family, or a business associate has an interest, if all of the following are present, O.R.C. 2921.42(C):

- (1) The subject of the contract is necessary services or supplies of the governmental entity involved;
- (2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are furnished as part of a continuing course of business established prior to the public official's association with the governmental entity;
- (3) The treatment accorded the governmental entity is preferential to or the same as that accorded others in similar transactions; and
- (4) The transaction is conducted at arms-length with the full knowledge of the governmental entity as to the interest involved, and the public official takes no part in the deliberation or discussion with respect to the contract.

Penalties for violation of O.R.C 2921.42 vary, with fines of up to \$2,500.00 and terms of imprisonment of up to five (5) years. As a result, it is firmly advised that all public officials seek the advice of counsel before entering into a contract with a potential conflict of interest.

Ohio Ethics Law

The Ohio Ethics Law, O.R.C. Chapter 102, was enacted by the General Assembly (Effective January 1, 1974, HB 55, 135th General Assembly) to protect the integrity of government. It applies to public officials and is therefore applicable to all governing board members and employees. Provisions of the law include public official and employee restrictions and limits on outside compensation. These restrictions may be summarized as follows:

- (1) They are forbidden, during public employment and for twelve (12) months thereafter, from representing a client or acting in a representative capacity for any person on any matter in which the official or employee personally participated through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other "substantial exercise of administrative discretion". (Note: The above does not include the performance of ministerial functions, such as filing tax returns, applications for permits and licenses, incorporation papers, and other similar documents. It also does not prohibit a former official or employee from being retained to represent the public agency by which he was employed or on whose Board he served);
- (2) They may not during public service or employment, or any time thereafter without appropriate authorization, disclose or use any information acquired in the course of official duties which is confidential because of statutory provisions, or which has been designated as confidential and preserving that confidentiality is necessary to the proper conduct of government business;

- (3) At no time during their tenure of office or employment may they participate in a license proceeding which affects the license of any person to whom they, their immediate family, or a business association of which they own or control more than five (5) percent has sold goods or services totaling more than one thousand dollars (\$1,000) in the preceding year, unless they have filed the proper statement with the public agency involved; and
- (4) They are prohibited from using or attempting to use their official position to secure anything of value to them, which they would not ordinarily secure in the performance of their official duties. O.R.C. 102.03

Public officials are also subject, pursuant to O.R.C. 102.04(A), to a prohibition upon outside compensation. They may not "receive or agree to receive directly or indirectly compensation other than from the agency with which they serve for any service rendered or to be rendered by them personally in any case, proceeding, application, or other matter" that is before the entity of which they are an officer or employee.

The Ohio Ethics Commission may receive, initiate, and investigate complaints of violations of the Ohio Ethics Law. If it determines that there is reasonable cause to believe that a violation has occurred, it will conduct a hearing. If it then finds, by a preponderance of the evidence, that a violation has occurred, the evidence will be turned over to the appropriate prosecuting attorney. Persons convicted of a violation may be fined up to one thousand dollars (\$1,000.00) or sentenced to six (6) months in jail, or both.

It should also be noted that O.R.C. 102.09(D) requires that within fifteen days of any public official or employee, including governing board members and the Executive Director of the Board, beginning the performance of official duties, the public agency with which the official or employee serves, or the appointing authority, must furnish the official or employee with a copy of O.R.C. Chapter 102 and Section 2921.42, and may also furnish such other materials as the appropriate ethics commission prepares for distribution. The official or employee must acknowledge this receipt in writing. This requirement does not apply to governing board members at the time of reappointment.

The Ohio Ethics Commission will render advisory opinions on matters related to conflict of interest. The telephone number to contact the Ohio Ethics Commission is (614) 466-7090.

Incompatibility of Office

It is well-established in Ohio by court decisions that certain positions of public employment or public office are inherently incompatible -- that one person cannot serve in both positions. This common law rule was set forth in *State, ex rel. Attorney General v. Gebert*, 12 Ohio C.C.R. (N.S.) 274, at page 275 (1909);

... Offices are considered incompatible when one is subordinate to, or in any way a check upon the other; or when it is physically impossible for one person to discharge the duties of both...

Physical incompatibility is a matter of fact to be determined on the particular circumstances of each case. Incompatibility of office requires that the duties, responsibilities, and authority of each position be evaluated to determine if incompatibility is, in fact, present. A clear example of incompatibility would occur when one individual was serving both as a member of a governing board and as an employee of the Board. One position is answerable to the other, and thus, they are incompatible under the Gebert definition.

It should also be noted that certain positions are incompatible by statutory provision. In the event that doubt exists as to the compatibility of positions, the advice of legal counsel should be sought. Alternatively, the Board may wish to seek a written opinion from the Ohio Ethics Commission.

The Attorney General, in 1979 O.A.G. 79-111, has set forth seven (7) basic questions to be addressed when a question of compatibility of office arises. These are:

- (1) Is either position a classified employment within the terms of O.R.C. 124.57?
- (2) Do the empowering statutes of either position limit the outside employment or position?
- (3) Is one office subordinate to or in any way a check upon the other?
- (4) Is it physically possible for one person to discharge the duties of both positions?
- (5) Is there a conflict of interest between the two positions?
- (6) Are there local charter provisions or ordinances which are controlling?
- (7) Is there a federal, state, or local departmental regulation applicable?

Other Limitations

In order to round out the discussion of conflicts of interest by governing board members and employees, the specific relationships that are prohibited by O.R.C. 340.02 previously addressed in the Board Governance section are restated below:

Governing board members and employees are prohibited from serving as members of the governing board of any provider with which the Board has entered into a contract for services or facilities.

Governing board members of a Board are prohibited from being an employee of any provider with which the Board has entered into a contract for services or facilities. A person is not permitted to be an employee of a Board and a provider unless both the Board and the provider agree in writing.

Governing board members and employees of Boards are prohibited from having a spouse, child, parent, brother, sister, grandchild, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law that serves as a member of the governing board of any provider with which the Board has entered into a contract for the provision of services or facilities or that serves as a County Commissioner in any of the counties in the Board's service district.

It should be noted that a violation of one of these limitations may also constitute a violation of the Ohio Ethics Law or O.R.C. 2921.42. For example, if a person accepted appointment to a governing board who was also a governing board member of a private contract provider, that person would be in violation of the Ohio Ethics Law, O.R.C. Sections 340.02 and 2921.42. See Ethics Opinion 81-003.

One example of incompatibility is that pursuant to O.R.C. 340.02, a school principal may not serve on the governing board of an ADAMH Board when his employing school has contracted with the Board. 1981 O.A.G. 81-101.

BONDING

There is no statutory requirement that governing board members or employees of a Board be

bonded. It is to the advantage of the board members and the service district, however, that adequate bonds be obtained to cover loss which might be reasonably expected to occur as a result of fraudulent or dishonest acts, failure to faithfully perform duties, or failure to account for all monies received in the performance of their duties, by governing board members or employees. Bonding of employees will reduce the possibility that board members will be held personally liable for a loss caused by a dishonest employee, and bonding of board members will ensure that the district will not suffer financial loss due to actions of board members.

Purchase of a blanket bond for employees is authorized by O.R.C. 3.06. The bond will be approved as to form and sufficiency by the Board and should be filed with the records of the Board.

LIABILITY

Article I, Section 16, Ohio Constitution, provides that: ... “suits may be brought against the state, in such courts and in such manner, as may be provided by law”...

It has repeatedly been held by the courts of this state that this section is not self-executing but requires the passage of legislation to activate it. As a result, until very recently neither the state nor instrumentalities of the state, such as counties and townships, were subject to suit in tort. This immunity from suit was removed insofar as the state was concerned with the enactment of O.R.C. Chapter 2743 (effective January 1, 1975), which established the Court of Claims to handle suits against the state. The legislation specifically excluded from the waiver of immunity political subdivisions of the state. The recent trend of decisions of the Ohio Supreme Court has significantly eroded the doctrine of sovereign immunity. However, governing board members and employees are given a measure of protection under O.R.C. 340.03 (D), which currently states in part the following:

No board member or employee of a Board of alcohol, drug addiction, and mental health services shall be liable for injury or damages caused by any action or inaction taken within the scope of the board member's official duties or the employee's employment, whether or not such action or inaction is expressly authorized by this section or any other section of the Revised Code, unless such action or inaction constitutes willful or wanton misconduct.

This provision offers immunity, not only for injuries or damages caused by any action of a board member or employee, but also for any injuries or damages as a result of any inaction by a member or employee. The exception to this rule is where the action or inaction of the member or employee constitutes willful or wanton misconduct. Conduct will not constitute willful or wanton misconduct if:

- (1) the board member or employee acted in good faith and in a manner that the member or employee reasonably believed was in or not opposed to the Board's best interests; or
- (2) with respect to a criminal action or proceeding, the board member or employee had no reasonable cause to believe the conduct was unlawful.

However, it should be noted that this statute provides only a qualified immunity. First, it covers only action or inaction taken by a governing board member or employee while within the scope of official duty or employment. Tortious acts committed outside the scope of a member's or employee's official duties are not protected. Secondly, acts involving willful or wanton misconduct, as defined by that section, are also unprotected.

In addition, 5122.34 provides immunity to persons, including Boards and community mental health services providers, that procedurally or physically assist in the hospitalization or discharge,

determination of placement, court-ordered treatment, or in judicial proceedings of a person, if they are acting in good faith upon actual knowledge or information thought by them to be reliable.

Finally, no person may be held liable for any harm that results to any other person as a result of failing to disclose confidential information about a mental health client or failing to otherwise attempt to protect that other person from harm by the client.

In addition to these statutory protections, ADAMH Boards are authorized to procure with public funds insurance coverage to insure board members and employees of the Board against liability arising from the performance of their official duties. O.R.C. 340.11 If liability insurance is unavailable or the amount the Board has procured is insufficient to cover the amount of a claim, ADAMH Boards are authorized to indemnify a board member or employee for any action or inaction in the individual's capacity as a governing board member or employee if they acted in good faith and in a manner which they believed was in, or was not opposed to, the best interest of the board and, in a criminal action or proceeding, had no reason to believe the conduct was unlawful. Indemnification may be for any expenses, including attorney fees, that the board member or employee reasonably incurred as a result of a suit or other proceeding defending any action or inaction in the capacity of board member or employee or at the request of the board.

Finally, it should be noted both a Board and its governing board members and employees may be liable under 42 U.S.C. Section 1983 if, while acting under color of law, they cause any individual to be deprived of any federal civil rights. Such an action is not barred by Article I, Section 16, Ohio Constitution. If any allegations of such misconduct are made, legal counsel should be sought immediately.

EXECUTIVE DIRECTOR

The individual responsible for the day-to-day administration of a Board is the Executive Director. O.R.C. 340.04 states that a governing board may delegate to its Executive Director the authority to act on the Board's behalf in the performance of its administrative duties.

Appointment and Qualification

It is the duty of the governing board to employ the Executive Director. O.R.C. 340.04 requires only that the Executive Director be "a qualified mental health or addiction services professional with experience in administration or a professional administrator with experience in mental health or addiction services." Beyond this general description of qualifications, no other statutory requirements exist. Therefore, the governing board must exercise its discretion in selecting a person that is properly qualified for the position.

For the purposes of an Executive Director's qualifications, "mental health professional" and "addiction services professional" mean an individual who is qualified to work with person or persons with a mental illness receiving addiction services, pursuant to standards established by the Director of OhioMHAS under O.R.C. Chapter 5119.

It is recommended that a governing board enter into a written employment contract with the Executive Director detailing duties and authority, compensation including fringe benefits, performance evaluations, termination of employment, and other details and conditions of the employment arrangement.

Compensation

The compensation of the Executive Director is fixed by the governing board pursuant to O.R.C.

340.04. As there is no statutory limitation, this is also a matter left to the sound discretion of the Board members.

In addition to his/her salary, the Executive Director must also be reimbursed for all actual and necessary expenses that he/she incurs in the performance of official duties. For a detailed discussion of allowable expenses, see the *Expenses* heading in the *Public Officials and Employees* section.

Duties

The primary duties of the Executive Director are statutory in nature. These duties are mandatory and are listed in O.R.C. 340.041. They include:

- (1) Serving as an executive officer of the governing board and executing contracts on its behalf (subject to the prior approval of the governing board for each contract except as provided for under O.R.C. 340.03(F));
- (2) Supervising the services and facilities provided, operated, contracted, or supported by the Board to ensure that programs are being administered in conformity with O.R.C. Chapter 340 and the rules of the Director of OhioMHAS;
- (3) Providing consultation to community addiction and mental health services providers providing services under contract with the Board;
- (4) Recommending to the board those changes necessary to increase the effectiveness of addiction and mental health services and supports and other matters necessary or desirable to carry out O.R.C. Chapter 340;
- (5) Employing and removing employees and consultants and fixing their compensation and reimbursement within the limits set by the salary schedule and budget approved by the governing board (Note: employment and removal of unclassified employees and consultants is subject to prior approval by the governing board);
- (6) Encouraging the development and expansion of preventive, treatment, rehabilitative, and consultative services, as well as recovery supports, in the field of addiction and mental health services with emphasis on continuity of care;
- (7) Preparing for governing board approval an annual report of the services and facilities under the Board's jurisdiction, including a fiscal accounting of all services and supports;
- (8) Conducting studies, as necessary and practicable, for the promotion of mental health and addiction services and the prevention of mental illness, emotional disorders, and addiction; and
- (9) Authorizing the county auditor (or in a joint county district, the county auditor designated as the auditor for the district) to issue warrants for the payment of Board-approved obligations, provided that all payments from funds distributed to the Board by OhioMHAS are in accordance with the budget submitted pursuant to O.R.C. 340.08 and approved by OhioMHAS.

In addition to the above-listed duties, the governing board may, in its discretion, prescribe additional duties to be carried out by the Executive Director. O.R.C. 340.04.

Removal

As a general rule, the Executive Director serves at the pleasure of the governing board. As noted in a previous section of this Handbook, Executive Directors of Boards are deemed by statute to be "unclassified" employees. Thus, they do not enjoy all of the rights and privileges afforded to classified employees. Although Executive Directors are unclassified, they may not be summarily dismissed by the governing board. The proper procedure for removal is contained in O.R.C. 340.04. An Executive Director may be removed only for cause, and only then by a majority vote of the full membership of the governing board (not a majority vote of a board quorum). Formal, written charges must be drawn, and, upon request, the Executive Director must be afforded an opportunity for a hearing before the governing board. Only after these requirements have been met may an Executive Director be removed.

It is recommended in all cases that a periodic review of the performance of the Executive Director be conducted. This review should be in writing and maintained with the records of the Board.

For more information about the role of the Executive Director, see *Executive Director* in the *Frequently Asked Questions* section of the Appendix.

LEGAL COUNSEL

Single-County Boards

Pursuant to O.R.C. 309.09, the county prosecutor is the general legal counsel for single-county ADAMH Boards. The Board "may require written opinions or instructions from the prosecuting attorney in matters connected with their official duties". In addition, the prosecutor, in his/her role as legal advisor, is required to defend all suits and actions which the Board directs or to which it is a party. Thus, in most instances, the county prosecutor will serve as counsel for the Board.

Joint-County Boards

With respect to access to county prosecutors, joint-county ADAMH Boards differ from single-county Boards. Due to their multi-county nature, there is no authority for the prosecuting attorney of any county participating in a given district to provide general legal counsel to a joint-county Board. Therefore, joint-county Boards are *not* entitled to the services of any particular county prosecutor within the district. 1975 O.A.G. 75-014.

Private Counsel

Both single and joint-county ADAMH Boards may, under O.R.C. 340.04 (E), employ private legal counsel. In the case of single-county Boards, however, approval must first be obtained in accordance with O.R.C. 305.14.

The compensation to be paid to private counsel is a matter left to the direction of the governing board, with the assistance of the Executive Director. It need not be set at a specific dollar amount, so long as some clear standard by which the amount of compensation is to be calculated is contained within the order of compensation made by the Board. (Such compensation may include fringe benefits.) For example, an agreement that compensation is to be at a rate of \$150.00 per hour for a set maximum of hours would be sufficiently specific.

Whenever a Board retains private counsel, it is imperative that the nature of the relationship between the Board and the attorney be clearly established at the onset. This involves a determination of whether the attorney will serve the Board as an "employee" or an "independent

contractor". This distinction may become critical later on because the status of the attorney may determine the extent to which the Board is obligated to pay fringe benefits to the attorney, as well as the extent to which immunity from suit will be applied.

A very important decision in this area was handed down by the Ohio Attorney General in 1980 O.A.G. 80-098. Although that decision dealt with private counsel retained by a Board of township trustees, arguably, the same principles would apply to ADAMH Boards, or to any public agency. The opinion was important because it stated that the compensation and fringe benefits due to an attorney from a public agency were determined by the status of the attorney, i.e., whether he/she was an "employee" or an "independent contractor". Where private counsel is deemed an "employee" of the public agency, he/she is entitled to whatever discretionary fringe benefits the agency grants to its other employees, provided that he/she qualifies for such benefits. Those benefits may include sick leave, vacation, hospitalization and life insurance coverage. However, an attorney who is only an independent contractor is only entitled to be compensated pursuant to contract; he/she is not entitled to discretionary fringe benefits.

As to statutory fringe benefits, an attorney-employee is entitled to those benefits for which he/she qualifies, including holiday pay, membership in OPERS and workers' compensation. But an attorney-independent contractor is not entitled to holiday pay under O.R.C. 325.19. He/she may be covered by workers' compensation or unemployment compensation, but only if the agency procures such coverage for him/her. Whether an attorney-independent contractor is included in the OPERS system is a matter for determination by the Ohio Public Employees Retirement Board.

With reference to the attorney's eligibility for these benefits based upon status, 1980 O.A.G. 80-098 delineates the standards for determining such status. First, all of the relevant facts and circumstances surrounding the agreement between the agency and the attorney must be examined. These factors include:

- (1) The degree of independence to act which the attorney possesses;
- (2) Whether the attorney performs legal services solely for that public agency;
- (3) Whether the attorney is paid for particular services or is paid a yearly salary;
- (4) Whether the public agency provides office space and/or supplies for the attorney; and
- (5) Whether the attorney has the right to hire assistants and the obligation to pay such assistants.

Thus, the importance of the employee/independent contractor distinction is clear. If a Board desires to avoid obligations that would accrue to an attorney-employee, then certain formalities should be observed. The Board should spell out, in a written contract, the attorney's status as an independent contractor, the total compensation to be paid (i.e., that there are no fringe benefits, or if fringe benefits are to be given, the agreement should specify and limit them), and that the attorney is being compensated only for particular services and only pursuant to the terms of the contract. This procedure will help to avoid potential liability on the part of the Board and the State for unintended fringe benefits.

The Auditor of State will, in the normal course of events, refrain from issuing a finding for recovery for illegal expenditures of public funds where the expenditure in question is undertaken pursuant to a formal, written, good faith opinion of the legal advisor to the Board. It is essential that the opinion be presented to the Auditor before the conclusion of the audit. Where such an opinion is properly presented, the audit report may indicate that the Auditor of State is in disagreement with the legal advisor.

CONSULTANTS

Pursuant to O.R.C. 340.041 (E), the Executive Director of an ADAMH Board may employ and remove such consultants as may be necessary for the work of the Board. The Executive Director may also fix their compensation and reimbursement but must do so within the limits set by the salary schedule and the budget approved by the governing board.

If it is determined desirable to retain a consultant on a contract basis, the contract should be between the individual and the Board, in conformity with the general provisions as to contracting, including the certification requirements set forth in this text. The formal action of the governing board approving such contracts should indicate the basis of the decision to contract for such services.

AFFIRMATIVE ACTION AND DISCRIMINATION

Chapter 340 requires each ADAMH Board and each community addiction and mental health services provider to have a written affirmative action program that includes goals for the employment and effective utilization of, including contracts with, members of economically disadvantaged groups, as defined in O.R.C. 122.71(E)(1) in percentages reflecting as nearly as possible the composition of the Board's service district. Each Board and provider must file a description of the affirmative action program and a progress report on its implementation with OhioMHAS. O.R.C. 340.12.

Additionally, O.R.C. 340.12 states that all Boards and the services providers they contract with are prohibited from discriminating in the provision of services under its authority, in employment, or under a contract on the basis of race, color, religion, ancestry, military status, sex, disability, national origin, or age. O.R.C. 340.12.

PART V

ADMINISTRATION AND FINANCE

ADMINISTRATION AND FINANCE

BOARD MEETINGS

Procedure

An ADAMH Board, upon its creation and annually thereafter, should elect a chairman to serve as presiding officer. As no specified procedural rules have been designated for such ADAMH Boards, the governing board should adopt as quickly as possible its own rules, which should be entered into the record. It is suggested that a common authority, such as Robert's Rules of Order, be selected.

Open Meeting Requirement

Meetings held by the governing boards of ADAMH Boards and any committee established by those Boards are considered to be meetings of a public body subject to O.R.C. 121.22 (B)(1) and are therefore subject to the Open Meetings Act. O.R.C. 340.03(E) The Ohio Attorney General's *Sunshine Laws Manual*, which can be found on the Attorney General's website, is a comprehensive resource to use in understanding and applying the requirements of the Open Meetings Act. The Open Government Unit tab on the Auditor of State's website also includes Open Meetings Act resources: <https://ohioauditor.gov/open.html>.

Executive Session

Pursuant to O.R.C. 121.22(G), an executive session may be held in private when the subject matter under consideration by the governing board or a committee includes any of the following (*Note: The following list of subject matter for which executive session is permitted only includes those that may be applicable to Boards*):

- (1) Personnel matters (i.e., promotion, appointment, demotion, dismissal of public employee).
- (2) Purchase or sale of property, where premature disclosure of information would give an advantage to an individual.
- (3) Conferences with legal counsel concerning pending or imminent court action that involves the Board.
- (4) Collective bargaining.
- (5) Matters required by federal law or state statutes to be kept confidential.
- (6) Discussion of security measures and emergency response protocols, disclosure of which could reasonably be expected to jeopardize the security of the Board.

It should be noted that consideration of at least one of the above-listed matters must be the sole purpose for the executive session. Consideration of other subject matters exempt from the "open meeting" requirement would be improper. Before the governing board may hold an executive session, the motion and vote must state which one or more of the approved matters will be considered during the executive session. Additionally, a majority of a quorum of the governing board must be determined by roll call vote to hold such a session. O.R.C. 121.22 (G)

If the governing board meets in executive session to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee, official, licensee or regulated individual who did not request a public hearing, then the board's motion and vote to hold the executive session must state which one or more of the approved aforementioned

purposes are the purposes for which the executive session is to be held, but need not include the name of any person being considered at the meeting. O.R.C. 121.22(G)(1). Simply stating that the purpose of the executive session is “personnel” is not legally sufficient under O.R.C. 121.22(G)(1).

Any formal action of the governing board as to matters discussed in executive session must be taken in an open meeting. If the statutory requirements of O.R.C. 121.22 are not followed as to matters discussed in executive session, such formal action is invalid. Minutes of a meeting need only generally reflect matters discussed in an authorized executive session. However, they must be promptly recorded and open to public inspection. O.R.C. 121.22 (C).

Minutes

ADAMH Boards must keep minutes of all meetings of the governing board, which are to be promptly prepared, filed, and maintained, and must be available for public inspection. O.R.C. 121.22. Such minutes should be recorded in a journal of proceedings.

The journal of proceedings is an important record for the Board, as it serves as the formal record of action by the governing board. Incompleteness or obscurity of the record inevitably creates doubt as to the quality of the governing board's work or its willingness to submit its actions to scrutiny.

All formal actions of the governing board, particularly all actions involving the expenditure of public monies, should be set forth in detail in the record. This would include, but is not limited to: details of all contracts entered into by the Board; employment, appointment, or delegation of duties to the Executive Director; the adoption of compensation and fringe benefit schedules; submission and acceptance of reports; adoption of tax budgets and appropriation measures; transfers of funds; large purchases of materials and supplies; leasing and purchasing of property; and the approval of bills for payment.

Although not required by statute, it is recommended that all formal actions by the Executive Director, particularly significant personnel actions, be reported to the governing board and entered into the journal in some detail. This will not only protect the Executive Director from any subsequent misunderstandings, but will facilitate audits of the Board, thereby reducing the time and expense involved.

For more information, see *Journal of Proceedings (Minute Book)* in the Frequently Asked Questions section of the Appendix.

Notice of Meetings

ADAMH Boards are required, pursuant to O.R.C. 121.22, to establish a method by which any person may determine the time and place of all regularly scheduled meetings, and the time, place, and purpose of any special meeting. A special meeting may not be held unless twenty-four (24) hour notice is given to all news media that have requested notification. If an emergency meeting is called, those members calling the meeting must notify such news media of the time, place and purpose of the meeting. The methods of notice established by a Board must be contained in a policy or rule of the board. Per 340.03(E), the meetings of any committee established by an ADAMH Board are considered to be meetings of a public body subject to the notice requirements.

RECORDS

A number of other records are required to be kept by ADAMH Boards in addition to minutes of meetings. Virtually every public entity to which Boards are accountable requires that records be kept. To protect the interests of the public and of the individuals about whom reports are maintained, laws have been enacted governing the retention, destruction, disclosure, and

confidentiality of public records. Ohio's Public Records Act governs the retention and destruction of public records. The Attorney General's Sunshine Laws Manual, which can be found on the Attorney General's website, is a comprehensive resource to use in understanding and applying the requirements of the Public Records Act. The Open Government Unit tab on the Auditor of State's website also includes Public Records Act resources: <https://ohioauditor.gov/open.html>.

O.R.C. 149.43(A)(1) defines "public records" as any records kept by any public office except the following (*Note: This list only contains the public records exceptions that may be applicable to ADAMH Boards*):

1. Medical records;
2. Adoption records;
3. Probation records;
4. Records pertaining to proceedings related to the imposition of community control sanctions and post-release control sanctions;
5. Trial preparation records;
6. Confidential law enforcement investigation records;
7. Records for which the release is otherwise prohibited by state or federal law;
8. Intellectual property records; and
9. Certain records related to child fatality review boards.

Availability of Public Records

O.R.C. 149.43 provides that all public records must be promptly prepared and made available for inspection upon request by any person at all reasonable times during regular business hours. The individual responsible for the records must make copies available, at cost, within a reasonable period of time. "Public record" for such purposes includes any records required to be kept by any governmental unit, except, but not limited to, medical records, trial preparation records, confidential law enforcement records, adoption, probation and parole proceedings, and records for which the release is prohibited by state or federal law.

Records Commission

ADAMH Boards must operate under a records commission to ensure records retention schedules are in order and that disposal of records is occurring in accordance with approved retention schedules. In recent years, legislation has been enacted that classifies both single-county and joint-county Boards as "special taxing districts" for the purposes of their records commissions, as confirmed by the Ohio Attorney General in 2013 Op. Att'y Gen. No. 2013-006. In that opinion, the Attorney General stated that "...consideration of all the factors used in determining whether an entity is a county office leads to the conclusion that a single county ADAMH district is not a county office for purposes of R.C. 149.38. Therefore, a single county ADAMH district is not subject to the jurisdiction of a county records commission... Because a single county ADAMH district is not subject to the jurisdiction of any other records commission created by R.C. Chapter 149, it is subject to the jurisdiction of a special taxing district records commission." It has long been understood that joint-county Boards are not considered to be county offices. Therefore, both single and joint-county

Boards must comply with the requirements that are applicable to special taxing district records commissions.

Pursuant to O.R.C. 149.412, the records commission of a special taxing district must be composed of, at a minimum, a chairperson, a fiscal representative, and a legal representative of the governing board of the Board. The commission must meet at least once every twelve months upon the call of the chairperson. The functions of the commission are to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the special taxing district. The commission may dispose of records pursuant to the procedure outlined in O.R.C. 149.381. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule under the procedure outlined in that section.

O.R.C. 149.412(B) permits a single-county Board, upon mutual assent between the Board and the board of county commissioners for that county, to designate the county records commission as the records commission for the Board. That designation authorizes the county records commission to exercise all of the duties and responsibilities of a special taxing district records commission as described above. The mutual assent may be manifested in an agreement defining the terms and conditions under which the county records commission is to perform public records-related functions, including establishing records retention and destruction schedules, on behalf of the special taxing district. A multi-county Board is required to be its own records commission and does not have the option to designate a county records commission to act on its behalf.

Retention and Destruction of Public Records

ADAMH Boards must maintain its public records in accordance with its approved records retention schedule and may not destroy records until they have reached the end of their retention periods. When a Board's records commission has approved a records retention schedule (Form RC-2), the application must be sent to the Ohio history connection for its review. After completion of its review, the Ohio history connection will forward the application to the auditor of state for the auditor's approval or disapproval. The Ohio history connection will indicate on a RC-2 which records series will require a Certificate of Records Disposal (Form RC-3) prior to disposal. Applications for one-time disposal of obsolete records (Form RC-1) are used for one-time disposal or transfer of a record series that is no longer created or maintained. RC-1s must be approved by the records commission and then sent to the Ohio History Connection for its review.

Personal Information Systems Act

O.R.C Chapter 1347 contains restrictions on the maintenance of personal information systems. Every state or local government agency that maintains a personal information system is required to inform a person who is asked to supply personal information for a system whether the person is legally required to, or may refuse to, supply the information. Upon request, the agency must: (i) inform a person of the existence of any personal information in the system of which the person is the subject (ii) permit the person to inspect all personal information in the system of which the person is the subject, in most instances and (iii) inform the person about the types of uses made of the personal information, including the identity of any users usually granted access to the system.

Agencies must take reasonable precautions, as specified in the statute to protect the personal information in the system from unauthorized modification, destruction, use, or disclosure and must notify affected individuals if the security or confidentiality of their personal information has been compromised. O.R.C. 1347.05

Information contained in the system may be used only in accordance with the stated purpose of the system and must allow access to the system under conditions enumerated in the statute. It should

be noted that O.R.C. Chapter 1347 does not restrict access to records that are public under O.R.C. 149.43. (See 1980 O.A.G. 80-096.)

An agency may be enjoined from violation of the statute, and a purposeful refusal to comply with the statute is a minor misdemeanor. *O.R.C. 1347.99.*

Disclosure of Information Regarding Persons Receiving Community Mental Health and Addiction Services

ADAMH Boards must be familiar with the state and federal laws protecting the confidentiality of information pertaining to individuals receiving mental health and addiction services.

The Federal Drug and Alcohol Confidentiality Law (42 CFR Part 2), applies to the records of individuals who received or are receiving services from federally assisted drug or alcohol programs. It is a very restrictive law that provides very few exceptions to the requirement that client authorization be obtained prior to using or disclosing an individual's protected information. Pursuant to 42 CFR Part 2, ADAMH Boards are considered to be "lawful holders" of Part-2 protected information for the records they receive from addiction providers and are therefore required to comply with its requirements in regard to safeguarding and making further disclosures of that information. It is important for Boards to understand 42 CFR Part 2 so that they understand how information pertaining to clients receiving addiction services can be received and disclosed and to ensure that providers are obtaining the necessary releases that permit Boards to receive and further release protected information.

ADAMH Boards are considered to be health plans pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (45 CFR Parts 160, 162, and 164) and must therefore comply with the requirements of HIPAA's Privacy Rule (45 CFR Parts 160 and Subparts A and E of 164) in regards to the use and disclosure of client information. Boards must also comply with the administrative requirements of the Privacy Rule as well as HIPAA's Security Rule and Breach Notification Rule.

State law also contains requirements for the disclosure of client information. The records of mental health clients are governed by O.R.C. 5119.28 and the records of clients receiving addiction services are governed by O.R.C. 5119.27. For the most part, both of those statutes are in line with their federal counterparts in regard to the disclosure of such records.

FUNDING

Funding for mental health and addiction services and facilities comes from a variety of sources including OhioMHAS discretionary funding, revenues from levies, funding driven by statutory provisions, and grants received from both public and private sources. The county commissioners in a Board's service district may also appropriate money to Boards. This section discusses some of those funding sources in more detail.

Ohio Department of Mental Health and Addiction Services Funding

The discretionary funding, or general revenue funds, that OhioMHAS receives as part of the state budget process is a combination of state and federal funds.

OhioMHAS is required to establish a methodology for allocating to ADAMH Boards funds appropriated by the general assembly to the department for the purpose of each Board's community-based continuum of care. O.R.C. 5119.23 The Department is required to notify and consult with relevant constituencies in establishing a methodology. Funds may be allocated to Boards on a district or multi-district basis. OhioMHAS is also required to consult with Boards,

providers and persons receiving services and supports to establish guidelines for the use of allocated funds.

O.R.C. 340.09 requires that OhioMHAS allocate to ADAMH Boards funding received from the general assembly for one or more of the following purposes:

- (a) operation of the ADAMH Board(s) serving the county;
- (b) provision of mental health and addiction services and recovery supports included in the Board's list of services and supports approved by OhioMHAS;
- (c) provision of approved support functions which may include the following:
 - (i) consultation
 - (ii) research
 - (iii) administrative
 - (iv) referral and information
 - (v) training
 - (vi) service and program evaluation
- (d) partnership in, or support for, approved continuum of care-related activities.

As previously discussed under the heading of *Community Addiction and Mental Health Services Planning Agency*, eligibility for state and federal funding is contingent upon an approved community addiction and mental health services plan or relevant part of a plan.

Proposed Budget/Application for Funds

Pursuant to O.R.C. 340.08(A), Boards must submit to OhioMHAS a proposed budget of receipts and expenditures for all federal, state, and local money the Board expects to receive in accordance with the following:

- i. The proposed budget must identify funds the Board has available for opioid and co-occurring drug addiction services and recovery supports required to be included in the Board's continuum of care.
- ii. The report must identify funds the Board and public children services agencies in the Board's service district have available to jointly fund the services required by O.R.C. 340.15 to be provided to children, or the parents, guardians, and custodians of children, that have been identified by a PCSA as being at imminent risk of abuse or neglect because of an addiction of a parent, guardian or custodian.

Approval/Disapproval/Amendment of Budget

The Board's proposed budget for expenditures of state and federal funds distributed to the Board by OhioMHAS is considered to be an application for funds, and OhioMHAS must approve or disapprove the budget for these expenditures in whole or part. O.R.C. 340.08(A)(3)

OhioMHAS must disapprove the Board's proposed budget for these expenditures in whole or in part if it does not make available in the Board's service district the essential elements of the community-based continuum of care required by O.R.C.340.032. Prior to a final decision to disapprove a budget in whole or part, O.R.C. 5119.22(G) requires a representative of the director of OhioMHAS to meet with the ADAMH Board and discuss the reason for the proposed action and any corrective action that should be taken to make the budget acceptable. OhioMHAS must also offer technical assistance to the Board to assist in making the list acceptable and provide a reasonable time for the Board to submit a revised budget.

If a Board determines that it is necessary to amend a budget that has already been approved, the

Board must submit a proposed amendment to the Director. The Director may approve or disapprove all or part of the proposed amendment. The Director must inform the Board of the reasons for disapproval of all or part of the amendment and the criteria that must be met before the amendment may be approved. The Director must provide the Board with an opportunity to present its case on behalf of the amendment, must give the Board a reasonable time in which to meet the criteria and must offer technical assistance to help it meet the criteria.

Eligibility for Funding

Any ADAMH Board or combination of ADAMH Boards can receive funds appropriated for such purposes by the General Assembly. Appropriated funds are disbursed to Boards only for services included in the budget approved by OhioMHAS. In order to obtain funds that are processed through OhioMHAS, a Board must comply with all requirements specific to the program and funding source and ensure through contract that providers are also in compliance with those requirements. O.A.C. 5122:1-3-01(D)(2)

Allocation Method

All funds appropriated are disbursed in the amounts and as designated by line items of the current appropriations bill. The funds available to each Board are allocated on an annual basis subject to quarterly review of appropriations levels. The federal funds processed through the Department are allocated in accordance with state and federal regulations. O.A.C. 5122:1-3-01(D)(3)

Payment Schedules

State funds are disbursed to ADAMH Boards on a quarterly basis, or a schedule set by the award, subject to state cash flow limitations. The total amount of state funds that can be awarded to any given Board is limited by the current appropriations bill for each line item. Payments of Board obligations by the county auditor, or in a joint-county district, the county auditor designated as the fiscal agent for the district, must be in accordance with the budget approved by the Director. Unless otherwise stated, all state and federal funds disbursed by the Department to the Boards, must be spent or obligated for budgeted services or administrative operations by the close of the state fiscal year. Federal funds processed through the Department are disbursed to Boards in accordance with state and federal regulations. O.A.C. 5122:1-3-01(D)(4)

Accounting Standards

Funds received by an ADAMH Board from OhioMHAS must be deposited only in the county treasury. Funds must be disbursed from the county treasurer's office or auditor's office, based on recommendation by the Board, following methods and procedures established by the State Auditor's Office. OhioMHAS must accept any accounting standards acceptable by the State Auditor. O.A.C. 5122:1-3-01(D)(5)

Withholding Funds

OhioMHAS *may* withhold all or part of the state and federal funds allocated or granted by the Department to a Board for any of the following reasons: (i) failure to comply with Chapters 340 or 5119 of the Revised Code; (ii) Board denies available service on the basis of race, color, religion, ancestry, military status, sex, age, national origin, disability, or developmental disability; or (iii) failure of the Board to comply with rules adopted by OhioMHAS. O.R.C. 5119.25

The Director *must* withhold funds, in whole or in part, from a Board for either of the following reasons: (i) the Director disapproves all or part of the Board's proposed community addiction and

mental health plan, budget, or list of addiction and mental health services and recovery supports; or (ii) the Board's use of state and federal funds fails to comply with the approved budget, including any approved amendments. O.R.C. 5119.25. The Director is prohibited from withholding funds for failure to comply with an approved budget without prior notification to and consultation with the Board and the appropriate board(s) of county commissioners. O.A.C. 5122:1-3-02(D)(4)

The Director also *must* withhold all or part of the funds allocated to a Board if it disapproves all or part of a Board's plan, budget, or list of services and supports under O.R.C. 5119.22 as described under the heading of *Approval/Disapproval/Amendment of Budget* in the *Funding* section.

Before OhioMHAS withholds funds for any reason, it must comply with the process and other requirements described in O.R.C.5119.25 and O.A.C. 5122:1-3-02(B). The Director may appoint a mentor as an alternative to withholding funds in accordance with O.R.C. 5119.25(C).

County Commissioner Funding

Per O.R.C. 340.07, the county commissioners in an ADAMH Board's service district, upon receipt from the Board of a resolution so requesting, may appropriate money to the Board for the operation, lease, acquisition, construction, renovation, and maintenance of addiction or mental health services providers and facilities in accordance with the comprehensive community mental health and addiction services budget approved by OhioMHAS pursuant to O.R.C. 5119.22.

Audits

Auditing Standards

ADAMH Boards receiving funds from the Department are audited by the state auditor's office as described under the *Auditor of State* Heading in Part I. Boards are required to follow the Auditor of State's guideline for conducting annual fiscal audits. Audits must include, at a minimum, as part of the audit scope "Financial and Compliance" as defined by the comptroller general's "Government Auditing Standards". A copy of the audit report, the audited financial statements, the opinion issued, and any management letters must be forwarded to the Department within thirty days following its receipt by the Board. All fiscal records are subject to review by OhioMHAS. O.A.C. 5122:1-3(D)(6) OhioMHAS publishes the annual statistical report which includes financial reporting data from the "Report of Actual Receipts and Expenditures". The Board must file an annual financial report with OhioMHAS, using the form provided by the Department by January thirty first following the end of a state fiscal year, for use in the annual statistical report. OhioMHAS may require Boards to submit additional financial reports as needed to account for funds provided. O.A.C. 5122:1-3-01(D)(7). For more information, see *State Auditing Procedures* in the *Frequently Asked Questions* section of the Appendix.

Board Financial Audits

The Auditor of State will perform general audits of all public offices in the state, including joint-county ADAMH Boards and single-county ADAMH Boards. Joint-county ADAMH Boards receive a separate audit and single-county ADAMH Boards receive their audit as part of the county overall audit. The scope of the audit will be designed to accommodate generally all state and federal audit requirements, including the "single audit" as set forth by OMB Uniform Guidance, 2 CFR Part 200.

Single county boards are considered part of the County and are audited as part of the County which is audited on an annual basis. Joint boards are required to have an audit annually and can prepare financial statements in either GAAP, OCBOA (Other Comprehensive Basis of Accounting) GAAP

look alike, or OCBOA regulatory. Samples of these financial statements can be found on the Auditor of State's website at [Financial Statement Shells \(ohioauditor.gov\)](http://ohioauditor.gov). If the Board chooses to prepare OCBOA statements *and* is subjected to a single audit, OCBOA GAAP look alike statements are recommended. If the Board spends more than \$750,000 in federal funds an annual audit is required.

Each year financial statements must be prepared and submitted in the Hinkle System for joint boards. The financial statements that are filed in the Hinkle system are the financial statements used for audit. Financial statements are due to be filed in the Hinkle system 60 days after the end of the fiscal year if OCBOA or regulatory statements are prepared. If GAAP statements are financial statements are required to be filed 150 days after fiscal year end. Please refer to the Auditor of State's website at [HINKLE Annual Financial Reporting \(ohioauditor.gov\)](http://ohioauditor.gov). *Note: The single county boards are generally reported by the County Auditor, but please check with your County Auditor to make sure.*

These audits of the Boards (and/or County) will be conducted on an annual basis and will include a full financial and compliance audit in accordance with generally accepted government auditing standards promulgated by the Auditor of State.

Special audits, conducted independently from the normal audit schedule, may be instituted at the option of the Auditor of State. Such audits are usually initiated by local officials or the Auditor of State after the receipt of information indicating the need for an investigation. If a special audit is requested by a Board, the request will be forwarded to the Special Investigations Unit who will evaluate the request in terms of the audit schedule, available personnel, and information submitted by the Board in support of the request.

The Auditor of State is authorized, when necessary in the opinion of the Auditor, to audit providers operating under contract with an ADAMH Board. Requests for audits of contract providers will be treated as requests for special audits.

Audits conducted by the Auditor of State will be performed by Assistant Auditors pursuant to O.R.C. 117.09. The expense of the audit services will be charged to the Board at an annual rate determined by the Auditor of State. The Auditor of State shall determine and publish annually rates to be charged to local public offices for recovering the costs of audits of local public entities. The published rate is then billed to the entity by way of its fiscal officer pursuant to O.R.C. 117.13(C)(4), if the entity has trouble paying for the cost of the audit, they may apply for financial help from the local government audit support fund established by O.R.C. 117.131.

If it is necessary for books and records to be removed from district offices in the course of an audit, a Board representative should prepare an itemized and dated receipt for the materials and ask that the auditor sign it. Upon return of the materials, the receipt should be returned to the auditor, with a notation that the materials were returned, dated, and signed by a district representative. If necessary, Assistant Auditors as well as other designated employees are authorized, pursuant to O.R.C. 117.18, to issue subpoenas to compel the attendance of witnesses and the production of books and papers.

Upon completion of the audit, a preliminary report is prepared by the auditors. The Executive Director and governing board members will be invited to an exit conference to discuss the preliminary report. Due to the preliminary status of the report, such conferences have been exempted from the requirements of O.R.C. 121.22(D), the "Sunshine Law". Accordingly, attendance is limited to representatives of the Board and Executive Director. A breach of confidentiality regarding the exit conference will preclude further conferences in future audits.

The exit conference will include a review of the audit and the preliminary audit report, suggested improvements to ensure compliance with applicable legal requirements, and recommendations for improving systems operations. The Board and affected individuals will be encouraged to comment upon the report, and may, if they wish, take formal exception to the results of the audit report. This should be done by submitting a written statement to the auditors within five (5) working days of the exit conference.

The preliminary report will be thoroughly reviewed at several levels after it is submitted by the assistant auditor, with careful consideration given to any official statement of exceptions. If the issues presented by the local official appear to be well taken, the preliminary report will be amended accordingly. When the report is approved for release, an electronic copy will be sent to the Board, the county auditor serving as fiscal officer, and the county prosecuting attorney (for joint-county Boards, this will be the prosecuting attorney of the county in which the district treasurer resides).

If the report indicates that public money has been unlawfully expended, that public money collected has not been accounted for, that any public property has been converted or misappropriated, or that public money has not been collected, a finding for recovery may be issued, directed to the individual(s) responsible for the loss. O.R.C. 117.28. If the finding is based upon the unlawful expenditure of public money, the finding may be made against any officer who orders or participates in the expenditure and his surety, as he is personally liable for the loss to the subdivision. 1952 O.A.G. 52-1713; 1976 O.A.G. 76-017. In the case of an ADAMH Board, this may include the governing board members, the Executive Director, the county auditor serving as fiscal officer of the Board, and the recipient of the money, as circumstances warrant.

If a finding for recovery is rendered against an individual, the individual is customarily given the opportunity to repay the amount in question prior to completion of the audit. When this is done, a finding notice will be issued; however, a notation will be added to the report to the effect that a repayment was made during the audit.

The prosecuting attorney must, within one hundred twenty (120) days, institute civil actions to collect such funds. If he/she does not act, the Attorney General may file an action for collection of the finding for recovery. Either action may also join the surety on any official bond of an office or employee.

For more information about audits conducted by the Auditor of State, see *State Auditing Procedures* in the Frequently Asked Questions of the Appendix.

Provider Audits

O.R.C. 340.03 (A)(6) requires each Board to audit at least annually “all program, addiction services, mental health, and recovery supports provided under contract with the Board. In so doing, the Board may contract for or employ services of private auditors.”

A copy of the fiscal audit report shall be provided to the Director of the Department of Mental Health and Addiction Services, the Auditor of State, and the County Auditor of each county in the board's district. These audits should include tests of the service providers' unit of services billed and rates which should reduce the risk of improper billings to the ADAMH Board.

Program Audits

O.R.C. 340.03(A)(4) also requires program audits that review and evaluate contract service providers.

Performance Audits (OPT)

Performance audits are collaborative and beneficial to all types and sizes of government, from townships and villages to large state agencies. A performance audit can be designed to increase customer satisfaction, reduce costs, align operations with mission and strategy, or improve the efficiency and effectiveness of operations. The Ohio Performance Team (OPT) has worked with a broad range of local and state entities to improve performance and outcomes. Performance audits examine the efficiency, economy, and effectiveness of government programs and functions with the goal of making them better. While financial audits determine if public funds are spent legally and managed in accordance with accounting principles, performance audits examine if funds are spent wisely and if programs achieve their intended purpose. The OPT functions like a consulting group with a proactive, forward focus. The goal is to identify areas of inefficiency or ineffectiveness and provide recommendations for improvement.

Any governmental entity can request a performance audit consult by contacting the Ohio Performance Team. The scope and timing of an audit is dependent on staff availability, but the Auditor of State's Office seeks to serve all clients interested in performance audit work.

Government representatives can work with their regional liaison to schedule a discussion about a performance audit or contact the Ohio Performance Team directly by filling out the Audit Request form. Concerned citizens interested in a performance audit are encouraged to work with their local officials, or they may contact Auditor Faber or their state representative directly.

You can contact the Ohio Performance Team directly by phone at 800-282-0370 or by email at performance@ohioauditor.gov.

The cost of a performance audit depends on the depth and breadth of the work performed. Organizations can reduce the cost of the audit or maximize the work performed for a fixed dollar amount by ensuring their data is accurate, and by responding to performance auditors' requests for information and feedback.

As a public sector organization, the Auditor of State's office works for the taxpayers and aims to keep audit costs low, seeking only partial direct cost recovery. The Auditor of State's Office partially subsidizes local government work through a specific appropriation from the State of Ohio.

Federal Audits

The Single Audit Acts of 1984 and Single Audit Act Amendments of 1996 created federal statutory guidelines which insure a consistent and uniform approach to the audit of federal grant dollars. In 2013, the Office of Management and Budget issued 2 CFR Part 200, establishing uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities ("Uniform Guidance"). If an ADAMH board expends \$750,000 or more during the entity's fiscal year in Federal awards, a single or program-specific audit must be conducted for that year. This audit will be completed by the Auditor of State, or a CPA firm selected by the Board and the Auditor of State. The auditors will select the specific federal programs to audit. Programs are selected based on size and an assessment of audit risk as described in 2 CFR Part 200, Subpart F. The audit of the programs will be designed to ensure that adequate controls over the program's activities are in place to ensure compliance with program guidelines.

The board is required to prepare a Schedule of Federal Expenditure Awards, which identifies the federal programs the board participates in, the amount of expenditures made within each program for the fiscal year, and the amount of expenditures passed through to subrecipients. Specific

requirements for the Schedule can be found in 2 CFR Part 200.510(b). In addition to compliance with applicable requirements, the board is required to establish policies for each federal requirement applicable to their grants.

The Board is also required to prepare a schedule of prior year audit federal findings which gives the status of prior findings for the current year and prepare a plan of action for any current year noncompliance or internal control findings. The next section, *Uniform Guidance Audits*, provides additional details about the requirements of federal audits and the Uniform Guidance.

Uniform Guidance Audits

If an ADAMH Board spends more than \$750,000 in federal monies, per OMB Uniform Guidance 2 CFR Part 200 a federal audit is required. It is the Board's responsibility to prepare a Schedule of Federal Award Expenditures, which identifies the federal expenditures made from each of the Board's federal programs. In the case of an ADAMH Board, most of the federal funding received is passed through to other agencies. It is important to understand the relationship with these other agencies as the Board may have to monitor the recipients.

Additionally, Boards must generally accept full legal responsibility for the administration of the program as well as meeting any stated performance requirements. The Uniform Guidance stipulates that federal agencies must conduct a risk analysis of applicants (§200.206), and requires states, local governments, and other non-federal entities have in place "effective internal controls" to assure the federal award is managed in compliance with all federal statutes, regulations and terms and conditions of the award (§200.303). Therefore, it is essential that an ADAMH Board make every effort to follow sound management practices and policies, throughout the entire award lifecycle. A board should have established policies and internal controls for each of the grant compliance requirements specific to their federal awards.

Pass-Through Entity and Subrecipient Relationship

2 CFR Part 200 (§§200.331–.333) requires ADAMH Boards, as pass-through entities of federal funds, to monitor subawards and ensure, along with other requirements, that subrecipients meet the audit requirements outlined in Subpart F (§§200.500-.521), and use awarded funds in accordance with applicable laws, regulations, and terms of the award. These subrecipient monitoring procedures apply to all subawards issued under federal programs awarded to boards.

Likewise, audit requirements are generally applicable to non-federal entities other than for-profits and international recipients; however, for-profits and international recipients can receive federal subawards and/or contracts. As these distinctions become gray areas depending upon the type of award and type of non-federal entity, prime recipients remain accountable for the federal funds they pass down to all subrecipients (§200.501(h); *see also* §200.332).

Uniform Guidance Subpart F (§§200.500-.521) audit requirements do not apply to for-profit subrecipients (§200.501(h)). If these provisions are not applicable under the Uniform Guidance or the federal agency regulation, "the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients" such as through the terms and conditions of the award agreement. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility.

The Uniform Guidance passes oversight and monitoring responsibilities from the federal agency to the non-federal prime recipient or pass-through entity, which is accountable for many monitoring requirements including verifying every subrecipient is audited as required by Subpart F (§200.332). As a practical matter, pass-through entities (e.g., states, local governments) often review and rely on previously issued single audit reports of subrecipients as part of their monitoring and oversight

responsibilities. However, because the Uniform Guidance single audit expenditure threshold is \$750,000, many smaller subrecipients are not subject to Single Audit (§200.501), and therefore, pass-through entities cannot rely on the Single Audit process to obtain the subrecipient monitoring assurances they require. Instead, pass-through entities must engage in more direct oversight of smaller subrecipients' use of federal funds and compliance.

Additionally, under the Uniform Guidance, all subrecipient auditees are to submit their audit reports directly to the Federal Audit Clearinghouse (FAC) (§200.512(b)), bypassing pass-through entities that must retrieve the data from the FAC rather than receive the data from their subrecipients, unless explicitly required in the grant terms and conditions to submit to the pass-through entity.

Pass-Through Responsibilities

Pass-through entity oversight and monitoring activities could be characterized as covering four broad areas that:

1. ensure the subrecipient receives all the pertinent federal award information needed to identify its subaward as part of a federal funding opportunity;
2. ensure the subrecipient's activities are conducted in compliance with the federal award and all federal statutes and regulations;
3. ensure that required audits are performed, and the subrecipient has taken prompt corrective action to resolve any audit findings; and
4. provide assurance that a subrecipient's noncompliance activities do not impact the pass-through entity's ability to meet its federal requirements (§200.332).

The Uniform Guidance lists what information needs to be provided to a subrecipient by a pass-through entity (§200.332(a)). In addition to specific federal award information, the Uniform Guidance outlines how pass-through entities must monitor subrecipients and provide the necessary guidance in order to meet federal requirements (§200.332(a)(2)).

Among other responsibilities for subawards, pass-through entities must follow the requirements of §200.332, which include:

1. Identify to the subrecipient that the funding is a subaward generated from a federal award and include Assistance Listing title and number, award name, name of the federal awarding agency, Federal Award Identification Number (FAIN), federal award date, period of performance of subaward (start and end dates), budget period start and end dates, project description that corresponds with the Federal Funding Accountability and Transparency Act's (FFATA) requirements (see more about FFATA below), subrecipient's name and unique entity identifier that could be equivalent to a DUNS number, total amount of funds obligated to the subrecipient, total amount of federal award (to the prime), amount of federal funds obligated by the action, name of the pass-through entity and contact information for awarding official, identify whether the action is a research and development award, and an indirect cost rate for the award;
2. Inform the subrecipient of all requirements imposed by the pass-through entity to ensure the federal award is used in accordance with federal statutes, regulations and terms and conditions of the award;
3. Inform the subrecipient of any additional requirements imposed by the pass-through entity in order for the pass-through entity to meet its responsibility to the federal awarding agency, which may include any required financial and performance reports;
4. Determine, in collaboration with the subrecipient, the appropriate indirect cost rate (if an approved federally recognized indirect cost rate is not negotiated between the subrecipient and the Federal government) which is either the negotiated indirect cost rate between the pass-through entity and the subrecipient or the de minimis indirect cost rate;

5. Inform the subrecipient of the requirement to permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary to meet all statutory and policy requirements set forth in the Uniform Guidance;
6. Ensure the subrecipient understands the terms and conditions associated with the subaward for close-out;
7. Evaluate each subrecipient's risk of noncompliance in order to determine the level of monitoring required by the pass-through entity, which may require special terms and conditions on the subaward by the pass-through entity to reduce noncompliance with the award's requirements;
8. Monitor the subrecipient's activities to provide reasonable assurance that the subrecipient administers federal awards in compliance with federal requirements, which includes reviewing financial and program performance reports required by the pass-through entity, following up on actions the subrecipient is undertaking to remediate any deficiencies associated with the federal subaward that may have identified through audits, on-site reviews or through other oversight activities and valuations;
9. Issue management decisions that pertain to audit findings associated with the subrecipient's federal award from the pass-through entity;
10. Resolve audit findings specifically related to the subaward;
11. Use and identify monitoring tools that can help subrecipients reduce noncompliance risks by providing training and technical assistance to subrecipients, conducting on-site program reviews of the subrecipient's operations, or arrange for "agreed upon procedures" engagements as described in §200.425(c);
12. Verify every subrecipient that expended \$750,000 or more in federal funds (the single audit threshold) is audited according to Subpart F of the Uniform Guidance;
13. Evaluate results of subrecipients' audits, on-site reviews or other monitoring actions and determine if the results indicate whether or not adjustments need to be made to the pass-through entity's records to adequately document the status of the federal award and the level of risk of the subrecipient; and determine whether or not enforcement action(s) are required for noncompliant subrecipients as described in §200.338.

Pass-through entities may consider implementing additional reporting requirements for subrecipients to help meet defined federal requirements, if such reporting requirements are "appropriate as described in § 200.208 Specific conditions" (§200.332(c)), particularly those relating a higher level of risk. Additional requirements should not just duplicate already collected data. Since non-federal entities are required to link their financial reports to performance accomplishments, additional requirements for subrecipients could focus on making sure performance accomplishments are well-defined, accurately reported and linked to expenditures. In some cases, it may be only a matter of adjusting the timing of the subrecipient reports in order for the pass-through entity to review the reported information in time to meet its own reporting deadlines to the federal agency.

Subrecipient Monitoring Activities of the Pass-Through Entity

Monitoring and oversight of subrecipients may take different forms, as appropriate, depending upon the pass-through entity's assessment of the subrecipient's risk of noncompliance (§200.332(b)). Monitoring and oversight activities conducted by the pass-through entity may include:

1. Reviewing subrecipient reports (financial and performance reports) or audit results (including evaluation of audit findings and review of corrective action plans), as appropriate, and as defined when necessary by the award agreement.
2. Conducting on-site visits of program operations.

3. Arranging for a limited scope audit, such as an agreed-upon-procedures engagement as described under §200.425, as appropriate, and as defined when necessary by the award agreement.
4. Providing training and technical assistance.

The Uniform Guidance leaves it to the discretion of pass-through entities to determine how best to properly monitor their subrecipients. For example, on-site visits to subrecipients provide an ideal opportunity to review financial and performance records and observe operations. The Uniform Guidance does indicate that pass-through entities can provide training and technical assistance to subrecipients for managing “program-related matters” (§200.332(e)(1)). On-site reviews or scheduled informational sessions may be opportunities pass-through entities can use to emphasize good business practices and ensure operating internal controls are working or are in place to maintain compliance with federal requirements.

Other factors may influence the extent of monitoring procedures such as the size of federal award, percentage of total program funds awarded to a subrecipient, the complexity of the applicable compliance requirements and the cost-effectiveness of various procedures. But pass-through entities should keep in mind that subrecipient monitoring and oversight activities will be closely examined for compliance when undergoing their own single audits.

Risk-Based Analysis

As part of their oversight responsibility, pass-through entities must conduct a risk-based analysis of their subrecipients (§200.332) in advance of making an award and reassess throughout the award period. When the pass-through entity determines that a subrecipient may pose some level of risk of noncompliance in meeting performance requirements or meeting federal requirements, it is suggested that pass-through entities place special terms and conditions on the subaward. The Uniform Guidance offers some examples in §200.208, such as requiring payments as reimbursements rather than advance payments or requiring additional project monitoring. But, in order to place such conditions, a pass-through should have written policies and procedures in place that outline how or what needs to be considered in a risk analysis of subrecipient such as a risk assessment matrix.

The oversight responsibility is tied very closely to internal controls that nonfederal entities, including pass-through entities, are required to have in place. Having well documented and thorough internal controls help pass-through entities better monitor and maintain oversight of their subrecipients (§200.303). Part of having a well-managed oversight and monitoring operation, includes having:

- Internal controls that are well-established and cannot be overridden or sidestepped.
- Staff members that are well-trained and knowledgeable about federal and pass-through requirements to monitor subrecipients; sufficient resources (financial and staffing) that are dedicated to subrecipient monitoring.
- Oversight managers that understand the subrecipient’s environment, systems and controls enough to identify the most appropriate methods/tools and extent of monitoring to be used for subrecipient monitoring (§200.332(e)(1)).
- Indicators in place that can help identify risks from outside factors that may affect a subrecipient’s performance (those related to economic conditions, political changes, regulatory changes or unreliable information) (§200.332(b)).
- Official written policies and procedures regarding aspects of subrecipient monitoring (e.g., methodology for resolving findings of noncompliance or internal control weaknesses) (§§200.303; 200.332(d)).

- Follow-up processes in place to ensure timely appropriate actions are taken or completed on a subrecipient’s reported deficiencies (§200.332(d)(2)).
- Reviews of the subrecipient’s financial and performance reports required by the pass-through entity (§200.332(d)(1)).

A pass-through entity must demonstrate adequate internal controls over the management of its federal awards (§200.303), which in turn means oversight of subrecipients. Pass-through entities will be required to address how they manage audit corrective actions, identify levels of subrecipient risk, access subrecipient information and how well they assist and communicate with subrecipients on issues and performance (§200.332).

During an audit, a pass-through entity should be prepared to discuss with the auditor the scope of its subrecipient monitoring activities, including the number, size, and complexity of subawards, as appropriate. Auditors may review documentation to ascertain whether the pass-through entity informed its subrecipients about federal program requirements imposed by laws, regulations and contract or grant agreement provisions (including verification that the pass-through entity required single audits of subrecipients that meet the annual threshold under Subpart F). Subrecipients that must comply with audit requirements either as defined by the Uniform Guidance or the award agreement and that meet the annual threshold would have a Single Audit report that can inform the pass-through entity. Though not explicitly stated, pass-through entities also should be prepared to discuss their audit and oversight activities of subrecipients, such as additional specific award conditions and explicit terms and conditions in the award document when subrecipients do not meet the annual threshold for single audits or applicability guidelines of the Uniform Guidance. The pass-through entity must notify the subrecipient of any additional requirements as well as the reason why the additional requirements are being imposed, nature of the action needed to remove the additional requirement, deadline for completing the action, and method for requesting reconsideration of additional requirements (§200.208(c)).

An auditor’s review will include procedures to verify that a pass-through entity, using appropriate techniques, monitored the activities of its subrecipients not subject to a single or program audit. Any subrecipient noncompliance must be reflected in the pass-through entity’s records, along with audit reports, management decisions on findings and corrective action plans for any deficiencies. Furthermore, pass-through entities are required to issue management decisions on any audit findings of its subrecipients pertaining to the Federal award provided to the subrecipient from the pass-through entity within six months of receiving the audit report or as required by federal agency regulation and ensure that a subrecipient takes necessary corrective action (§§200.521(c) and (d)). Pass-through entities must require their subrecipients allow access to records and financial statements needed to comply with Subpart F.

Subrecipients vs. Contractor Determination

Pass-through entities are directed under the Uniform Guidance to distinguish between a subrecipient (§200.1) and a contractor (§200.1) in order to prepare the appropriate award instrument for its subrecipients.

Subrecipients may receive any federal award type, such as assistance agreements, contracts or fixed amount awards (§200.1). A subrecipient would be associated with a federal assistance agreement like a grant or cooperative agreement that works toward the greater public good and is responsible for “adherence to applicable federal program requirements” (§200.331(a)(4)).

When it expends federal funds under an assistance agreement, the subrecipient is generally subject to audit requirements under Subpart F of the Uniform Guidance (§200.501(f)) unless the subrecipient is a for-profit or international organization. In those circumstances, a pass-through can

accommodate the need for audits by including applicable compliance requirements in the terms and conditions in the award agreement (§200.501(h)).

When an entity is considered a vendor or contractor, on the other hand, it would not be working toward the greater public good, and instead would be supplying goods or services to a pass-through entity for the nonfederal entity's own use (§200.331(b)). When a vendor or contractor spends federal funds under a contract, it is not subject to federal award compliance requirements; however, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards. (§200.501(g)).

Pass-through entities should determine whether the relationship with another nonfederal entity is that of a subaward or contract relationship before making an award so that the appropriate award instrument is used, and the appropriate guidance is followed. The primary factor used to make such a determination is a fundamental difference of purpose, i.e., whether payments made by the pass-through entity are for the purpose of carrying out a portion of a Federal award which constitutes a federal subaward or provide payment for goods and services that directly support the pass-through entity which constitutes a contract (§200.331).

There are some key factors that make it sometimes difficult to determine the status of a subrecipient or contractor. They can share so many attributes that it often makes it difficult to distinguish between them, leading to some confusion about the selection of the appropriate award instrument to use for the pass-through and how best to monitor the obligations that each requires. Subawards and contract relationships are:

- subject to the authorizing federal statute and appropriation;
- structured by regulations;
- dependent upon the prime recipient's receipt of a federal award; and
- offered to eligible applicants and can be targeted for under-represented or special classes of applicants.

Further, both subawards and contracts are:

- awarded to responsible parties who are judged best able to perform;
- governed by terms and conditions; and
- need a written agreement between the prime and second-tier organization.

Despite these extensive similarities, federal subawards and contractor relationships, again, address different fundamental purposes and are based on the principal purpose or intended use of the funds.

Concerning for-profits, it is recommended that pass-through entities check federal agency regulations, and in absence of compliance provisions, establish their own requirements through the award agreement with any for-profit subrecipients to ensure the proper management and administration of federal funds and to protect the rights of the pass-through entity to audit the for-profit subrecipient. Federal awarding agencies may apply Subparts A through E of the Uniform Guidance to for-profit subrecipients (§200.101(C)); however, Subpart F are not, unless applicable provisions are included in the award agreement (§200.501(h)).

Subrecipient Responsibilities

In turn, subrecipients under a subaward have their own responsibilities and should be able to:

- provide the pass-through entity (and its independent auditors) access to records and financial statements to determine compliance with federal requirements (§200.332(a)(5));
- facilitate the pass-through entity’s planned monitoring and oversight activities (e.g., on-site visits) (§200.332(e)(2));
- provide information to the pass-through entity on previous audits as requested (§200.332(b)(2));
- provide results from direct federal agency monitoring activities on direct federal awards received (§200.332(b)(4));
- provide written notification to the pass-through entity when it is not required to undergo a single audit, or provide information that supports not being required to undergo a single audit;
- provide the pass-through entity with verification that a required audit was performed in accordance with Subpart F when the subrecipient expected to meet or exceed the audit threshold of §200.501 and Subpart F is made applicable to the subrecipient, if necessary, through the terms and conditions of the award agreement;
- inform the pass-through entity whether the relevant program would be audited as a major program using the risk-based approach (determined solely by the auditor) and, if not, the cost of having it audited as such (if desired by the primary recipient, the subrecipient must have the program audited as major), as appropriate, and as defined when necessary by the award agreement;
- send written notification to the pass-through entity that an audit was conducted in accordance with Subpart F of the Uniform Guidance, and that no audit findings and questioned costs (for the current or prior year) were related to the subaward, as appropriate, and as defined when necessary by the award agreement;
- take appropriate and timely corrective action to resolve audit findings (including the preparation of a corrective action plan), and comply with any management decision issued by the pass-through entity (due within six months of receiving the subrecipient’s audit report), as appropriate, and as defined when necessary by the award agreement and/or by federal agency regulation which may vary; and
- follow up on audit findings, as appropriate, and as defined when necessary by the award agreement, unless no longer valid because the findings occurred at least two years earlier, the pass-through entity did not follow up on the findings, and a management decision was never issued; and keep copies of audit reports and related documentation on file for at least three years following the audit period for review by pass-through entities (§200.512(f)).

Donations

O.R.C. 340.03 (C) authorizes Boards to receive gifts, grants, devises, bequests of money, and property for the benefit of the purposes for which the Boards were established. Money received in such a manner, including accrued interest, must be deposited in the treasury of the county, the treasurer of which is the custodian of the Board’s funds. Such grants, devises, and bequests may be used for any purpose within the authority of the Board and the specifications of the donor or grantor.

Recruitment of Financial Support

Boards are required to recruit and promote local financial support for addiction and mental health services from private and public sources. O.R.C. 340.03(A)(7)

Levies

A joint-county Board is considered to be a “subdivision” and a “taxing authority” pursuant to O.R.C. Chapter 5705 and as such it may place on the ballot the question of levying a tax in excess

of the ten (10) mill limitation pursuant to 5705.19(A) for the current expenses of the Board, or division (F) for the construction or acquisition of any specific permanent improvement or class of improvements. In addition, either a joint-county ADAMH Board, or a board of county commissioners, may seek a tax levy under O.R.C. 5705.191 to supplement the general fund for the purpose of making appropriations for human or social services.

While single-county Boards are without statutory authority to levy funds directly, they may, nonetheless, obtain financial relief through their respective boards of county commissioners. O.R.C. 5705.221 permits boards of county commissioners to seek additional special levies for alcohol, drug addiction, and mental health services and facilities. That section provides that any time a board of county commissioners, by a majority of the full membership, determines that tax revenues obtained within ten (10) mill limitations are insufficient to provide for necessary alcohol, drug addiction, and mental health services and facilities, the commissioners may declare it necessary to levy a tax in excess of the limitation for either the single-county ADAMH district or the county's contribution to the joint-county ADAMH Board district of which the county is a part. The purpose of this levy must be limited to the operation of alcohol, drug addiction, and mental health programs and/or the acquisition, construction, renovation, financing, maintenance, and operation of alcohol, drug addiction, and mental health facilities. If a board of county commissioners levies a tax under O.R.C. 5705.221 for the county's contribution to a joint-county district, revenue from the tax may only be expended for the benefit of the residents of the county.

Resolutions passed for such purposes must conform to O.R.C. 5705.19 and must be certified and submitted in accordance with O.R.C. 5705.25.

The joint-county Board or the board of county commissioners, as taxing authorities for the district, may, after approval of the levy and before the first collection of the tax may be made, issue anticipation notes in accordance with O.R.C. 5705.191 or O.R.C. 5705.193.

Anticipation notes issued pursuant to these sections must mature serially, and in substantially equal amounts over the life of the levy. If such notes are issued, the amount necessary to pay the principal and interest on the notes each year shall be deemed appropriated, and additional expenditures from the proceeds of such levy shall be limited to the balance in excess of such amount.

Borrowing in anticipation of levy proceeds for operational purposes prior to the first collection of the tax, pursuant to Revised Code Section 5705.191, is limited to an amount not to exceed fifty percent (50%) of the levy. Borrowing prior to the first collection of the tax for capital improvements, in accordance with O.R.C. 5705.193, is limited to an amount not to exceed seventy-five percent (75%) of the estimated proceeds of the levy.

Levy Campaigns

Although Ohio law has a general prohibition against political subdivisions using public funds to communicate or distribute information that supports the passage of a levy, ADAMH Boards are unique in that O.R.C. specifically exempts ADAMH Boards from that prohibition. This exception is a result of ADAMH Boards having the statutory duty under ORC 340.03(A)(7) to "recruit and promote local financial support...from private and public sources...". Two attorney general opinions have held that this language permits Boards "to expend public funds to promote the approval by the electorate of a tax levy for mental health programs or alcohol and drug addiction programs, provided that the board has public funds available that may lawfully be expended for that purpose" and the exception for ADAMH Boards has since been specifically added to O.R.C. 9.03. 1979 Op. Att'y Gen. No. 79-022; 1999 Op. Att'y Gen No. 99-030.

It is important to keep in mind the cautionary note contained in AG opinion 99-030 which states that, "It is important to note that, as with any expenditure of public funds, the board is bound by

the requirement that it exercise its discretion in a reasonable manner and is subject to judicial review for an abuse of discretion.”

Political Action Committees and Levy Committees

The same unique exception described in the previous section also exempts ADAMH Boards from the requirement to form a Political Action Committee (PAC) in order to raise and expend funds to support their levies. The Ohio Elections Commission Opinion on this matter (2019ELC-01) states that:

An Alcohol, Drug Addiction, and Mental Health Board (ADAMHB) is not required to create a political action committee (PAC) to receive money that will be utilized to promote the passage of its tax levy since ADAMHB’s have the unique authority under Ohio law to raise and expend funds to support their own levies pursuant to the provisions of Ohio Revised Code (RC) 340.03(A)(7), read in concert with RC 9.03(C), and are not, therefore, a PAC pursuant to the provisions of RC 3517.01.

Accordingly, if an ADAMH Board does not form a PAC, it is not required to file campaign finance reports. The Elections Commission Opinion states that:

An ADAMHB is not required to file campaign finance reports as outlined in RC 3517.10 et seq., if it does not utilize a PAC for receipt and expenditure of money used to promote the passage of its levy as it is not listed in the types of entities that are required to file such reports under RC 3517.10.

Therefore, an ADAMH Board can simply utilize good internal financial accounting practices to track levy-related donations and expenditures. In doing so, ADAMH Boards should keep in mind the cautionary note contained in one of the attorney general opinions noted above which states that “It is important to note that, as with any expenditure of public funds, the ADAMH Board is bound by the requirement that it exercise its discretion in a reasonable manner and is subject to a judicial review for an abuse of discretion.”

If an ADAMH Board chooses to form a PAC, it must comply with the requirements for formation, administration, and campaign finance reporting requirements.

When determining whether to form a PAC or utilize a levy committee, it is important to note that some entities and individuals may prefer to (or be required to) make their donations to PACs as opposed to directly to ADAMH Boards and vice-versa.

Levy Advertising

O.R.C. 3517.20 requires every entity that issues a political publication, advertisement, or communication supporting a ballot issue to include the name of the entity “in a conspicuous place on, or contained in, the publication, communication” or advertisement. Therefore, if a PAC is the issuing entity, the name/logo of the PAC must be included and if the ADAMH Board is the issuing entity, the name/logo of the ADAMH Boards must be included. Certain printed matter and other kinds of printed communications such as campaign buttons, balloons, pencils, or similar items, the size or nature of which makes it unreasonable to add an identification or disclaimer, are exempt from these requirements.

For more information, see *Levies* in the *Frequently Asked Questions* section of the Appendix.

Indigent Driver Alcohol Treatment Funds

As previously addressed, ADAMH Boards are required to administer the indigent drivers’ alcohol

treatment program of courts located in their service districts in accordance with the requirements of O.R.C. 4511.191. Those Boards must receive a reasonable amount not to exceed five percent of the funds credited to the IDAT fund to cover the costs it incurs in administering IDAT programs (O.R.C. § 4511.191(H)(3)).

Inpatient Care Fines and Court Costs

A court may order that any fines or court costs collected by the court from defendants who have received inpatient care from a community addiction services provider be paid, for the benefit of the program, to the ADAMH Board in the service district in which the services provider is located or to OhioMHAS. O.R.C. 2935.33.

Community Construction Programs

Pursuant to O.R.C. 5119.42(B), Boards may apply to the Director of OhioMHAS for state reimbursement of, or state grants for, community construction programs, including residential housing for severely mentally disabled persons and persons with substance use disorders.

The Director may also approve applications for state reimbursement of, or state grants for, community construction programs by other governmental entities or by private nonprofit organizations after the application has been reviewed and recommended for approval by the Board for the district from which the application came, and the application is determined to be consistent with the community addiction and mental health services plan, the budget and the statement of services submitted by that Board.

Fraud Reporting

Complaints of fraud in Ohio's governments may be made at any time by any public employee or private citizen.

O.R.C. 117.103 requires all public employers to notify employees of the methods of reporting fraud. New hires must verify in writing, within 30 days, that they have been advised of the system, and the Auditor of State's (AOS) office will verify compliance during regular audits. The AOS has created a [Fraud Reporting Model Form](#) to help employers comply with these requirements. This form is located on the Auditor of State's website.

FISCAL AFFAIRS

Board Auditor and Fiscal Officer

The county auditor in an ADAMH Board's service district is the auditor and fiscal officer of a Board. In joint-county Board districts, the auditor of the county, the treasurer of which has been designated in the agreement between the counties of the district as custodian of the community addiction and mental health services funds, serves as the auditor and fiscal officer of the Board.

State funds allocated for the support of a service district must be paid to the appropriate county treasurer or, in a joint-county district, to the treasurer of that county designated in the agreement as custodian of the community addiction and mental health services funds and authorized to make payments from the funds on order of the county auditor and on recommendation of a governing board, or the Executive Director of the Board when authorized by the governing board. The auditor must submit to the Board a detailed monthly statement of all receipts, disbursements, and ending balances for the community addiction and mental health services funds. O.R.C. 340.10

For more information about the role of the County Auditor, see *County Auditor* in the *Frequently Asked Questions* section of the Appendix.

Fiscal Year

Other than for school districts, the fiscal year of all political subdivisions of the state, including ADAMH Boards, is January 1st to December 31st. O.R.C. 9.34 However, subdivisions may use a different fiscal year with the approval of the fiscal officer of the subdivision and the Auditor of State. A different fiscal period may also be used for one or more funds, with the required approvals, which may be beneficial in aligning with the fiscal year of an entity providing money for the fund or with the fiscal period of a capital project. Use of a different fiscal year or period must be consistent with generally accepted accounting principles and the Auditor of State may require the subdivision to continue to maintain financial reports or statements on the basis of the state fiscal year.

Differing fiscal years can be particularly confusing since reports to OhioMHAS must be prepared on the basis of the state fiscal year, July 1st to the following June 30th, and those reports often reflect federal funding running from October 1st to the following September 30th.

It is also important to note that all laws applicable to the levying of taxes, the appropriation or expenditure of revenues and the making of financial reports for a fiscal year, apply to the calendar year which must be considered with respect to all activities related to the county offices and the budget and expenditure system operated through the county auditor, county treasurer and budget commission.

Budget and Expenditure Process

ADAMH Boards should submit a proposed budget of receipts and expenditures for all federal, state, and local moneys the board expects to receive to the department of mental health and addiction services pursuant to O.R.C. sections 340.08 and 5119.22. *See* O.A.C. 5122:1-3-01 (Estimated Receipts and Expenditures, Form MHA-FIS-040-B). An ADAMH Board may pass a resolution requesting an appropriation from the county. When making this request, the Board should provide the resolution and budget approved by the department of mental health and addiction services to the board of county commissioners. O.R.C. 340.07. Where a board of county commissioners desires to appropriate funds to an ADAMH board but finds that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide for the county's contribution, the board of county commissioners may propose that an additional tax be levied. O.R.C. 5705.221.

As public agencies operating through the fiscal system maintained by the county auditor and county treasurer, ADAMH Boards are subject to the budgetary and expenditure requirements and controls set forth in O.R.C. Chapter 5705. Single-county Boards differ markedly from joint-county Boards in this area, as joint-county districts are "subdivisions" within the scope of O.R.C. Chapter 5705, whereas single-county districts are merely divisions of the county government for such purposes. O.R.C. 5705.01 The difference is significant and will be discussed in detail throughout this section.

Budget

O.R.C. 5705.28 requires every taxing authority (the board of county commissioners or a joint-county ADAMH Board) in the state to adopt a tax budget by July 15 of each year for the ensuing fiscal year, which will extend from the following January 1 to December 31. This tax budget is formulated for the joint purposes of: (1) furnishing information to the county budget commission

in adjusting tax levies to conform to the limitations of law, and (2) fixing the limitations of appropriations and expenditures by the district during the ensuing fiscal year.

A joint-county Board, as the taxing authority of a subdivision, is responsible for the preparation of a tax budget. A single-county Board is not a taxing authority and is not authorized or required to prepare a budget. It must instead submit an estimate of contemplated revenues and expenditures for the ensuing fiscal year to the board of county commissioners, as taxing authority for the county. Similarly, a joint-county Board must, if it wishes to receive an appropriation from a member county in the district, submit such an estimate of contemplated revenues and expenditures to the board of county commissioners of each such county.

The estimate of contemplated revenues and expenditures must be submitted in the form specified by the Auditor of State. It is due before the first day of June of each year. The estimate of revenues should include: expected state and federal funding, fees paid to the Board, donations and other revenues received under color of office.

The tax budget, as completed by the taxing authority, must include the following information as to necessary expenditures and sources of revenue:

- (1) Necessary current operating expenses, classified as to personnel services and other expenses, indicating the fund from which such expenditures are to be made [this may include an undesignated contingent expense not to exceed three (3) percent of total appropriations for current expense];
- (2) Necessary expenditures for permanent improvements, exclusive of any expense to be paid from bond issue, classified as to the improvements contemplated and the fund from which the expenditure is to be made;
- (3) Necessary amounts for the payment of final judgments;
- (4) Necessary expenditures for a purpose for which a special levy is authorized, and the fund from which such expenditures are to be made;
- (5) Comparative statements, so far as possible in parallel columns of corresponding items of expenditures, for the current and two (2) preceding years;
- (6) Estimated receipts from sources other than the general property tax during the ensuing fiscal year, including estimated unencumbered balances at the end of the current year and the funds to which such estimated receipts are credited;
- (7) The amount each fund requires from the general property tax, which shall be the difference between the contemplated expenditures and estimated receipts;
- (8) Comparative statements, as far as possible, in parallel columns of taxes and other revenues for the current fiscal year and two (2) preceding fiscal years;
- (9) The amount required for debt charges;
- (10) Estimated receipts from sources other than the tax levy for payment of debt charges;
- (11) The net amount for which a tax levy shall be made for payment of such charges, and the portion of the levy which will be within and outside the ten (10) mill limitation; and

- (12) An estimate of amounts from taxes authorized to be levied in excess of ten (10) mill limitations, the fund to which such amounts will be credited, and the sections of the Ohio Revised Code under which such tax is exempt from the limitations on the tax rate.

In addition to these items, the budget must also include any other information prescribed by the Auditor of State.

The tax budget for the next fiscal year must be adopted by July 15 and submitted to the county auditor on or before July 20, unless an extension is granted by the commissioner of tax equalization. Two (2) copies of the proposed budget must be filed with the fiscal officer of the subdivision not less than ten (10) days before its adoption. At least one (1) public hearing must be held on the budget, with at least one (1) publication in the official publication of the subdivision of a newspaper of general circulation in the subdivision not less than ten (10) days prior to the date of the hearing. *O.R.C. 5705.30.*

The county budget commission is responsible for adjusting the tax levies to conform to the limitations of law and certifying to the subdivisions the amounts available for appropriation and expenditure in the ensuing fiscal year. Pursuant to O.R.C. 5705.27, the budget commission consists of the county auditor, the county treasurer, and the county prosecutor. Two elected representatives may be added by vote of the people.

In the case of the single-county ADAMH Board, or requests of a joint-county Board for appropriations from a county, the proposed funds for ADAMH Boards are treated somewhat indirectly, as part of the tax budget of the county commissioners, and are subject only to the single-county budget commission. The tax budget of the joint-county Board is, however, subject to concerted action of the budget commissioners of each county within which the joint-county district is located, either as provided in O.R.C. 5705.48 for joint sessions, or by other concerted action.

The budget commission, upon receipt of the annual tax budgets of all taxing authorities within the county, is to ascertain the total amount to be raised in the county for the purposes of each subdivision and taxing unit. After ascertaining, as provided in O.R.C. 5705.31, that certain tax levies are properly authorized and approving them, the budget commission is required to adjust the estimated amounts required from the general property tax levies within the limits of O.R.C. 5705.01 to 5705.47, inclusive. The commission is authorized to adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made from each fund by a subdivision.

It is important to note that the budget commission is required by Sections 5705.31, and 5705.32, Revised Code, to reduce any levy, voted or unvoted, the need for which is not reflected in the tax budget of the subdivision. This provision effectively prevents a subdivision from accumulating unused funds over a period of years for subsequent expenditure, as the tax levy will be reduced to reflect available but unused funds.

A limited exception to this has been recognized by the Attorney General, in 1978 O.A.G. 78-003, which allows a Board to budget funds in the current fiscal year for accumulation and expenditure in a subsequent fiscal year, provided that it can show a need to accumulate funds for a specific program requiring matching funds in the subsequent year.

After the budget commission has completed its work, it will certify to the taxing authority of each subdivision the action it has taken, including the rate of tax to be levied. The taxing authority must certify its authorization of the tax levies to the county auditor by October 1, unless a later date is approved by the commissioner of tax equalization. If an additional tax is subsequently approved by the electorate to be placed on the tax list of the current year, it is to be certified by the Board of

elections to the taxing authority, which is to make the levy and certify it to the county auditor, who is to extend it to the tax list for collection.

The certification of the action of the budget commission to the taxing authority must list the various funds of the subdivision, and set forth for each fund the estimated unencumbered balances and receipts, any tax to be levied for such fund and the estimated revenue to be derived, the rate of the levy, the portions within and outside the ten (10) mill limitation, and the appropriations which may be made from each fund. A summary, entitled the "official certificate of estimated resources" must be attached, setting forth the estimated resources of each fund. The action of the budget commission may be appealed by the subdivision within thirty (30) days after receipt of official notice, as provided in O.R.C. 5705.37.

Each taxing unit must, before the end of the year, amend its tax budget so as to bring the total contemplated expenditures from each fund within the total certified in the official certificate of estimated resources from the budget commission. On or about the first day of the fiscal year, the county auditor, as fiscal officer of the district, must certify to the budget commission the total amount from all sources available for expenditure from each fund set up in the tax budget, with unencumbered balances from the preceding year. O.R.C. 5705.36. On the basis of this information, the budget commission issues an "amended official certificate of estimated resources," which serves as the basis for the annual appropriation resolution.

For more information, see *County Budget Commission* in the *Frequently Asked Questions* section of the *Appendix*.

Annual Appropriation Resolution

At the end of the fiscal year, all unencumbered funds remaining in an appropriation revert to the fund from which they were appropriated and are subject to future appropriations. O.R.C. 5705.40. Until a new annual or temporary appropriation measure is adopted, no expenditures may be made by the Board other than of properly unencumbered funds for commitments entered into in the preceding fiscal year. For this reason, it is necessary that the taxing authority, either the joint-county ADAMH Board or the board of county commissioners, adopt an appropriation resolution on or about the first day of the fiscal year.

The adoption of the annual appropriation resolution may be delayed, if necessary, until April 1. O.R.C. 5705.38. If this is done, however, it is necessary to adopt a temporary appropriation resolution to authorize expenditures from the first of the fiscal year until such time as the annual appropriation resolution is adopted. If such a temporary resolution is adopted and an annual resolution is not adopted by April 1, no expenditures of any kind can be made or lawful obligations incurred after April 1 until the annual resolution is adopted.

Appropriation measures must separately set forth the amounts appropriated for each office, department and division, and, within each, the amount appropriated for personal services. Appropriations may be made from a fund only for such purposes for which the fund was established, and must, of course, be within the totals listed as available for expenditure therefrom. O.R.C. 5705.39.

Supplemental appropriations may be made, provided that all provisions of law for the original appropriation are followed, and that no appropriation item may be reduced below the amount of unliquidated and outstanding obligations against the appropriation. If additional revenue for the current fiscal year is received and is not included in an official certificate of estimated resources or an amendment thereto, or if actual balances and receipts in a fund exceed the certified estimate, then the budget commission, upon certification by the fiscal officer of the amount of said excess,

shall issue an amended certificate, which may be the basis for additional appropriations by the taxing authority.

Expenditure of Funds

After the tax budget and appropriation procedures are completed, funds are available for expenditure. The means by which such expenditures are made and restrictions on such expenditures are set forth in O.R.C. 5705.41.

Pursuant to O.R.C. 340.10 and O.R.C. 5705.41, expenditures of money of a Board are on warrant of the county auditor, upon recommendation of the Board (or the Executive Director when authorized by the Board). No contract shall be made or expenditure ordered by a subdivision, including ADAMH Boards, unless there is attached a certificate of the fiscal officer of the subdivision stating that the amount required to meet the contract has been lawfully appropriated and is in the treasury or in the process of collection to the credit of the appropriate fund, free from encumbrances. If a contract is a continuing contract to be performed in whole or in part in an ensuing fiscal year, such certification is necessary only for the amount required for the current fiscal year.

Where a contract is entered into on a per unit basis, the Executive Director is to certify to the fiscal officer an estimate of the total amount to come due on the contract, and a certification by the fiscal officer as to the availability of funds to cover this estimate or so much of this estimate as will come due in the current fiscal year will satisfy the certification requirements. O.R.C. 5705.41.

Any contract entered into without such a certificate is void, and no payment may be made on the contract. However, if the fiscal officer prepares a certificate stating that at the time of the execution of the contract and at the time the certificate is executed, a sufficient sum appropriated for the purpose of the contract is in the treasury or in the process of collection to the credit of the appropriate fund and unencumbered, the Board may authorize the issuance of a warrant in payment of the amounts due upon the contract. However, the resolution authorizing such issuance must be passed within thirty (30) days of the receipt of the certificate, except where the amount involved is less than three thousand dollars (\$3,000.00). In the latter case, the auditor may authorize payment without affirmation, providing the expenditure is otherwise valid.

O.R.C. 5705.41 (D) also authorizes the fiscal officer to issue "blanket certificates." Where such a certificate has been issued, purchases may be made, orders for payment issued, and obligations incurred, provided that the aggregate total of such sums, entered into for the specified purpose the indicated fund, does not exceed the sum certified by resolution adopted by the Board. An itemized statement of obligations incurred and payments made must be presented to the fiscal officer before another certificate may be issued. Only one (1) blanket certificate may be outstanding at a given time in a single line item.

A Board may also make expenditures and contracts from a specific line-item appropriation account in a specified fund upon certification of the fiscal officer for most professional services, fuel, food items and other specific recurring and reasonably predictable operating expenses. This certification is not to extend beyond the current fiscal year. More than one "super blanket" certificate may be outstanding at a particular time for any line-item appropriation.

Approval of Bills for Payment

In accordance with O.R.C. 340.10, Boards must authorize the payment of a bill and recommend payment by the county auditor before any funds of the Board may be expended. The responsibility for the approval of payment may be delegated to the Executive Director if the governing board so desires.

Approval of payments by the governing board must be taken at a regular or special meeting of the governing board, supported by a resolution duly adopted by the board. The following are *recommended*:

- (1) A list of bills to be approved is to be prepared setting forth the name of each vendor, voucher number, purpose of expenditure, appropriate code, fund to be charged and the amount due for payment. The listing should contain a statement approving the vouchers for payment and ordering the auditor to issue his/her warrant;
- (2) The itemized list, together with the vouchers drawn to the individual vendors, is presented to the board. The vouchers should contain invoices supporting the items for which payment is claimed, the fund, appropriation code, date of allowance and a reference identifying the resolution approving same;
- (3) Upon approving the vouchers, the governing board members sign the itemized list, instead of each voucher. The secretary of the board should then record the approved itemized list in the record of proceedings; and
- (4) The reference identifying the approving resolution is to be placed upon each voucher. One copy of the approved itemized list, together with the vouchers drawn to the individual vendors, is presented to the county auditor. The county auditor must then prepare and issue his/her warrant on the treasurer.

With regard to these procedures, the attention of the Board is directed to O.R.C. 5705.45, which imposes personal liability upon any public officer or employee for wrongful payment of public money. Irrespective of O.R.C. 5705.45, the determination as to whether an expenditure constitutes a valid public purpose is to be made solely by the Board. The county auditor must not substitute its judgment for that of the Board's regarding what constitutes an expenditure for a public purpose. If the county auditor questions the validity of an expenditure that is within available appropriations and for which a proper order or voucher and evidentiary matter is presented, the auditor shall notify the Board. If the Board determines that the expenditure is valid and the county auditor continues to refuse to issue the appropriate warrant on the county treasury to pay the voucher, the Board, pursuant to O.R.C. 319.16, may seek a writ of mandamus from the court to compel the auditor to issue the warrant.

Credit Cards

ADAMH Boards are required to follow O.R.C. 9.21 and O.R.C. 9.22. A legislative authority, such as an ADAMH Board, is required to adopt a written policy before the use of a card account. The policy must include provisions addressing all the following:

- The appointment of a compliance officer, where applicable;
- The officers or positions authorized to use a credit card account;
- The types of expenses for which a credit card account may be used;
- The procedures for acquisition, use, and management of a credit card account and presentation instruments related to the account including cards and checks;
- The procedure for submitting itemized receipts to the fiscal officer or the fiscal officer's designee;
- The procedure for credit card issuance, credit card reissuance, credit card cancellation and the process for reporting lost or stolen credit cards;
- The political subdivision's credit card account's maximum credit limit or limits; and

- The actions or omissions by an officer or employee that qualify as misuse of a credit card account.

These policy points are a minimum. Policies should be tailored to the specific needs of each ADAMH Board.

The Written Policy Requirements of O.R.C. 9.21 establishes two separate internal control models for credit card usage by political subdivisions: 1) the custody and control model and 2) the compliance officer model. Boards should select one of the following models to account for the use of credit cards.

Custody and Control Model

The custody and control model is a system in which the treasurer or fiscal officer maintains physical control over all credit cards of the entity and may use a system requiring the cards to be “signed out” by authorized, designated users. Entities utilizing the custody and control model should specify the following items in their written policies, approved by the governing board:

- Who the authorized, designated users are,
- A reasonable length of time the card is allowed to be out of the control of the treasurer or fiscal officer for the transaction(s) to be completed, and
- The procedures that should be followed to submit itemized receipts, as well as any other entity specific requirements that would fit the needs of a political subdivision.
- An officer or employee is liable in person and upon any official bond the officer or employee has given to the political subdivision to reimburse the treasury for the amount.

Note: Auditors will evaluate the length of time a card is out of the control of the treasurer or fiscal officer for reasonableness on a case-by-case basis as part of the upcoming audits of political subdivisions. for which the officer or employee does not provide itemized receipts in accordance with the credit card policy.

Compliance Officer Model

The compliance officer model is a system in which the treasurer or fiscal officer does not maintain physical control of the credit cards. In this instance, a political subdivision must appoint a compliance officer. The compliance officer should not be the treasurer or fiscal officer and should not be an authorized user of the card or authorize use of the credit card by an individual.

A quarterly review process should take place where the legislative authority, and compliance officer, if applicable, reviews the number of cards and accounts issued, the number of active cards and accounts the entity has, the cards' and accounts' expiration dates, and the credit limit for each card and account. O.R.C. 9.21(D). See Auditor of State Bulletin 2018-003 for additional details.

O.R.C. 9.22 prohibits political subdivisions from holding or utilizing a debit card account, except for law enforcement purposes. This section does not apply to debit card accounts related to the receipt of grant moneys.

Borrowing Money

Neither joint-county, nor single-county Boards are "subdivisions" within the meaning of Ohio's Uniform Bond Act (O.R.C. Chapter 133) and as a result, must secure the passage of a levy in order to directly borrow money, with very few exceptions.

Establishment of Reserve Balance Account and/or Capital Improvement Account

Upon the passage of a resolution by a Board's governing Board, the county auditor must establish for the district either a capital improvements account or a reserve balance account, or both, as set forth in the Board's resolution. O.R.C. 5705.221(C).

The capital improvements account is a contingency fund for the acquisition, replacement, renovation or construction of facilities and movable and fixed equipment. The board shall identify all capital holdings in its inventory and agree upon a replacement cost. Funds not needed to pay for current expenses may be annually appropriated to this account. However, the maximum amount in the capital improvements account cannot exceed twenty-five percent (25%) of the replacement value of all capital facilities and equipment currently used by the Board for programs and services. Any unspent dollars in the account should be carried over to the next year to the maximum twenty-five percent (25%) limitation. Other funds which are available for current capital expenses from federal, state or local sources may also be appropriated to this account.

The reserve balance account shall contain funds which are not needed for current operating expenses and are not deposited in the capital improvements account, but instead will be needed to pay for operating expenses in the future. Consequently, these funds constitute excess revenue of the Board not needed for current operations. Funds from either account shall be appropriated upon the Board's request. This appropriation is an optional management tool available to the Board.

Deposit and Investment of Public Funds

Deposit and investment of public funds belonging to the Board are subject to the provisions of the Uniform Depository Act, O.R.C. Chapter 135. As a result, the responsibility for the deposit and investment of such funds rests with the county treasurer and the board of county commissioners (in a joint district, the board of county commissioners of the county in which the county treasurer serves as treasurer of the district). The Boards, whether single-county or joint-county, are totally without authority to maintain any deposits of public funds or to invest any public monies which come under their control.

Under O.R.C. 135.351, interest on money of a Board which is in the county treasury must be paid into the general fund of the county.

Annual Financial Report

Pursuant to O.R.C. 117.38, multi-county ADAMH Boards must submit an annual financial report to the Auditor of State. Prescribed forms for presenting financial statements using the AOS Regulatory Cash Basis are available from the Auditor of State. The Boards also have the option of filing financial statements using an Other Comprehensive Basis of Accounting GAAP look-a-like cash or modified cash basis (OCBOA 34) or even on a GAAP basis. Please see the Auditor of State's website for further information: <https://ohioauditor.gov/references/shells.html>. A financial report given to the Audit Section during the audit process does not satisfy the requirement for submission of the annual financial report. Reports submitted to the Auditor of State to satisfy the statutory filing requirement are not required to be audited prior to their submission. These annual reports should be submitted to the Auditor of State within 60 days of year end through the AOS' Hinkle Annual Financial Data Reporting System (Hinkle System).

Disbursements over \$25,000

Governmental entities are prohibited from disbursing money totaling twenty-five thousand dollars or more to any person for the provision of services that are for the primary benefit of individuals or the public and not for the primary benefit of a governmental entity or the employees of a

governmental entity, unless they first enter into a signed written contract with the person that contains all of the requirements and conditions set forth in O.R.C sections 9.23 to 9.236.

If the disbursement of money occurs over the course of a Board's fiscal year, rather than in a lump sum, the Board must enter into the written contract with the person at the point during the Board's fiscal year that at least seventy-five thousand dollars has been disbursed by the Board to the person. Thereafter, the Board must enter into a written contract with the person at the beginning of the Board's fiscal year, if, during the immediately preceding fiscal year, the Board disbursed an aggregate amount totaling at least seventy-five thousand dollars to that person. O.R.C. 9.231

A contract entered into under O.R.C. 9.231 shall contain the following:

- 1) Minimum percentage of money expended on direct costs;
- 2) Identification of records to retain for direct costs;
- 3) A contact name and number for obtaining approval of contract amounts, if applicable;
- 4) Financial review and audit requirements;
- 5) Provisions established by rules of the attorney general adopted under 9.237 of the Revised Code;
- 6) Permissible disposition of money received by a recipient in excess of the contract amount earned, if excess is not to be repaid to the governmental entity. O.R.C. 9.232.

PROPERTY

Gifts

O.R.C. 340.03 (C) authorizes ADAMH Boards to receive moneys, lands, or property for the benefit of the purposes for which the Boards were established for the Board to hold and apply according to the terms of the gift, grant, or bequest. All money received must be deposited in the treasury of the county and available for use by the ADAMH Board for any purpose within the authority of the Board and any specifications of the donor or grantor.

Real Property

By statute, Boards are empowered to purchase real property. Pursuant to O.R.C. 340.031 (B), Boards may acquire, convey, lease, or enter into a contract to purchase, lease, or sell property for community addiction and mental health services and related purposes. Incident to this authority, Boards may also enter into loan agreements, including mortgages, for the acquisition of such property. Such agreements may, however, require approval of a tax levy to repay the debt. Article XII, Section 11, Ohio Constitution.

Personal Property

Boards may purchase and hold title to personal property necessary for the operation of the Board, such as office supplies, equipment, furniture, and motor vehicles. In addition, the Board would hold title to property purchased for the use of contract agencies or the cost of which is supported with public funds through the Board.

Inventory

It is essential for both auditing and management purposes that a perpetual inventory be maintained of personal property titled in the name of the Board. All property with a cost in excess of a threshold figure selected by the Board and a useful life in excess of one (1) year should be listed. Inventory records should include for each item: the date of acquisition; cost; the manufacturer's serial number, if any; an identifying tag number attached to the property and assigned serially to the equipment;

the individual, division, or office to which the equipment is assigned; the location of the equipment; date of Board action for disposal of property; date of disposal; the amount, if any, realized on disposal; and the fund to which such proceeds were credited.

Insurance

Boards may expend public funds for the purchase of insurance to insure the Board against loss due to physical damage or destruction of Board-owned property. Since insurance is a specialized service, the Board should not need to obtain insurance through the competitive bidding process.

PURCHASING REQUIREMENTS (OTHER THAN BEHAVIORAL HEALTH SERVICES)

Bidding Procedures

Contracts entered into by ADAMH Boards pursuant to O.R.C. 340.036 with licensed residential facilities for the operation of facility services and with community addiction and mental health services providers for services and recovery supports are exempt from the competitive bidding requirements of O.R.C. 307.86.

Boards should consult with their legal counsel regarding the applicability of competitive bidding requirements to Board purchases.

Prevailing Wage

ADAMH Boards, as public authorities, must comply with the prevailing wage requirements of Chapter 4115 in regard to any construction, reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement if the threshold amounts set forth in statute are reached for a given project. O.R.C. 4115.04.

Electronic Data Processing Services

O.R.C. 9.35 specifies the procedures by which a "public official" may contract for and engage the services of a financial institution, or other person engaged in the business or capable of rendering electronic data processing or computer services, to perform the mechanical, clerical, or record-keeping services necessary in the performance of his or her duties. Such services may include, but are not limited to, the preparation of payroll and other records, the preparation, signing, and issuance of checks, the preparation of reports and accounts, and the performance of all similar duties. "Public official", as used in this section, includes an appointed officer, employee or agent of a public body who is permitted or required to perform such duties. It is clear that employees of ADAMH Boards may fall into this classification.

A public official is authorized to enter into a contract with an institution rendering electronic data processing services to perform such duties. This may be done if:

- (1) Any surety bond required for such position covers any loss which might occur under such contract;
- (2) The public body with jurisdiction over the public official property authorizes such contract by resolution;
- (3) The provisions of the contract are consistent with the uniform system of accounting and reporting prescribed by the Auditor of State; and

- (4) Assurances satisfactory to the Auditor of State are furnished by the institution, or other person engaged in the business or capable of rendering electronic data processing or computer services.

Also, the books and records of the public official in the possession of the person performing such service, shall be subject to audit by the Auditor of State to the same extent as if such services were being performed by the public official himself.

Such contracts are, of course, subject to the general provisions of contracts discussed earlier in the text as well.

Set Aside Programs

Pursuant to O.R.C. 340.13, ADAMH Boards must set aside a portion of their contracts for the purchase of equipment, materials, supplies or services (other than mental health and addiction services) for bidding by minority business enterprises and a portion of construction contracts for bidding by EDGE business enterprises.

Minority Business Enterprise means an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are residents of this state and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians. Minority Business Enterprises must be certified by the department of development.

EDGE business enterprise means a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a participant in the encouraging diversity, growth, and equity program by the department of development.

The director of the department of development maintains a list of certified minority business enterprises and EDGE enterprises.

For contracts for the purchase of equipment, materials, supplies or services (other than contracts with mental health and addiction services providers) Boards must select a number of contracts with an aggregate value of approximately fifteen per cent of the total estimated value of contracts to be awarded in the current fiscal year for bidding by minority business enterprises only. If a contract is set aside and no bid is submitted by a minority business enterprise, the contract should be awarded according to normal bidding procedures. The Board must from time to time set aside such additional contracts as are necessary to replace those contracts previously set aside on which no minority business enterprise had bid.

Boards must strive to attain a yearly contract dollar procurement goal, the aggregate value of which equals approximately five per cent of the aggregate value of construction contracts for the current fiscal year for EDGE business enterprises only. If the Board, after making a good faith effort, is unable to comply with the goal of procurement for contracting with EDGE business enterprises, the Board may apply in writing, on a form prescribed by the department of administrative services, to the director of OhioMHAS for a waiver or modification of the goal.

Within ninety (90) days after the beginning of each fiscal year, each Board must file a report with OhioMHAS that shows for that fiscal year the name of each minority business enterprise and EDGE business enterprise with which the Board entered into a contract, the value and type of such contract, the total value of contracts awarded to minority and EDGE business enterprises, the total value of contracts awarded for the purchase of equipment, materials, supplies, or services (other

than mental health and addiction services) and the total value of contracts entered into for construction.

Boards should consult with their legal counsel regarding questions or concerns related to set-aside provisions or requirements.

Affirmative Action and Non-Discrimination

O.R.C. 125.111 requires that all contracts entered into by political subdivisions, such as Boards, for any purchase, must contain a provision that prohibits contractors, subcontractors and their employees from discriminating in the hiring and employment of persons for the performance of work under the contract based on the protected categories listed in that section. Additionally, each such contract must contain a provision requiring contractors to file a description of its affirmative action program and a progress report on the program's implementation with the equal employment opportunity office of the department of development on an annual basis. The department of development's Affirmative Action Program Verification webpage provides additional information about these requirements.

APPENDICES

FREQUENTLY ASKED QUESTIONS

GENERAL

1. *Q. What is "comingling of funds"?*
 - A. Commingling of funds is a mixing of different funds in such a manner that they lose their distinct character and become indistinguishable one from the other.
2. *Q. Who maintains ownership and who is accountable for commingled funds?*
 - A. The question of ownership is a legal question which must be settled on a case-by-case basis. Where public funds and private funds have been commingled, the public officer responsible for the public funds is accountable for the commingled funds.
3. *Q. What factors should be considered in determining whether a specific item should be included in an inventory?*
 - A. The responsible authority should consider both the estimated useful life of the equipment and the cost in determining whether it should be included in the inventory. If the cost is in excess of a reasonable amount adopted by the authority and has a useful life in excess of one year, it should generally be included in the inventory.
4. *Q. What controls should be imposed upon dispensing of equipment owned by a Board?*
 - A. A perpetual inventory system, as described in the text, should be established. Whenever property is assigned to anyone, the name of the individual responsible for the equipment, the office, or division with which he/she is connected, and the location of the equipment should be noted on the inventory record. Any change in these items should be reported to the individual responsible for maintenance of the inventory.
5. *Q. How should inventory items be labeled?*
 - A. An identifying number should be affixed to each inventory item. The numbers should also be listed with the item in the inventory records. All numbers should be sequential.
6. *Q. How is the phase-out procedure determined when a contract with a provider is terminated?*
 - A. The procedure will be determined by the terms of the contract between the parties. Careful consideration should thus be given to the contracting process, particularly with regard to property purchased by the Board, or property in which the cost was supported with public funds.
7. *Q. What documentation of expenses is required of a Board's governing board members and employees?*
 - A. To receive reimbursements for expenses incurred on business of the Board, governing board members and employees should present official receipts to support the request. The Board should have a policy indicating what is required for reimbursement and under what circumstances.

BOARD POWERS AND DUTIES

1. *Q. May a Board purchase liability insurance for the Board as an entity or for Board members as individuals?*
 - A. O.R.C. 340.11 authorizes the Board to procure a policy or policies of insurance to insure Board members and employees against liability incurred in the performance of their official duties. In addition, there is implied authority for the Board to purchase liability insurance for the Board in any areas in which it is potentially liable as an entity.

2. *Q. May an ADAMH Board indemnify a governing board member or employee if liability insurance is unavailable or insufficient to cover the amount of a claim?*
 - A. O.R.C. 340.11 authorizes the Board to indemnify any governing board member or employee for any action or inaction in that individual's capacity as a governing board member or employee who acted in good faith and in a manner that the individual reasonably believed was in, or was not opposed to, the best interest of the Board and, in a criminal action, had no reason to believe his/her conduct was unlawful.

Boards may indemnify governing board members and employees against any expenses, including attorney fees, which are actually and reasonably incurred in the defense of any such suit or other legal proceeding.

3. *Q. Should governing board members be bonded?*
 - A. It is suggested that all governing board members be bonded in such amount as to cover any loss which might reasonably be expected to occur as a result of fraudulent or dishonest acts, failure to faithfully perform the duties of office, or failure to account for all monies received in the performance of official duties.

4. *Q. What are legitimate governing board member expenses, for purposes of reimbursement by the district?*
 - A. Governing board members may be reimbursed for actual and necessary expenses incurred in the performance of official duties. Although some reasonable discretion is necessary here, Board members should, whenever possible, have receipts to verify the expenditures made. Additionally, it must be shown that the expenses were, in fact, necessary and essential to business of the district and not merely convenient for the individual. For example, expenditures for alcoholic beverages and gratuities (unless a mandatory service charge) are not necessary for the business of the district and are, therefore, not reimbursable expenses. Additional guidance can be found in Auditor of State Technical Bulletins 2003-05 and 2004-02.

5. *Q. What is appropriate wording for the oath of office?*
 - A. The oath may be worded as follows: "I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Ohio and will faithfully discharge the duties of my office."

6. *Q. Who may administer the oath of office?*
- A. The oath of office may be administered by a notary public, a judge, any elected official that serves within the Board's service district, or by any member of the General Assembly throughout the state.
7. *Q. In carrying out official actions of a Board's governing board, what constitutes a quorum and a majority vote?*
- A. A quorum for formal action consists of a majority of the governing board, provided that all members have been given notice of the meeting. Formal action then requires the assent of a majority of the quorum. Exception: Removal of the Executive Director requires a majority vote of the full membership.
8. *Q. Should all members of a governing board be given a copy of O.R.C. Chapter 102 and Chapter 2921 regarding Ohio's ethics laws?*
- A. Yes. Those items must be distributed to governing board members and employees within fifteen (15) days of their appointment or employment. Their receipt must be acknowledged in writing. This requirement does not apply to governing board members at the time of reappointment.
9. *Q. Must vouchers be approved for payment prior to payment, or may they be reviewed and approved afterwards?*
- A. O.R.C. 340.10 expressly provides that payment of vouchers is to be on recommendation of the governing board or the Executive Director of the Board when authorized by the governing board. There is no authority for payment prior to formal approval.
10. *Q. What are specific procedures for listing of vouchers for Board approval?*
- A. An approved method is set forth under the *Approval of Bills for Payment* heading in the Administration and Finance section.
11. *Q. May the authority to approve vouchers for payment be delegated to the Executive Director of the Board?*
- A. Yes, this is a delegable duty.
12. *Q. If a suit is brought alleging an illegal expenditure of public funds by a Board, against whom is suit brought?*
- A. Such a suit may be brought by the prosecuting attorney, the Attorney General, or a taxpayer. It may be a suit for recovery of funds believed to have been expended without authority of law, or it may seek an injunction restraining a proposed expenditure of funds. Defendants may include the Board as an entity, an individual governing board member, the Executive Director, the fiscal officer and/or potential or actual recipients of funds, as circumstances warrant.
13. *Q. How many days prior to a scheduled meeting should governing board members receive written materials concerning the meeting?*
- A. There is no specific time limit for materials to be submitted to governing board members prior to a meeting unless such a limit is adopted by the governing board in its organizational

rules. However, all members must be given prior notice that a meeting is to be held. In addition, certain requirements are imposed as to public notice of meetings, pursuant to O.R.C. 121.22 (F).

14. *Q. What constitutes a full Board term?*

A. A full Board term is four years, commencing on the first day of July, except for initial appointments. For additional information, see the *Additional Eligibility Requirements of Board Members* heading in the *Board Governance* section.

15. *Q. Must ADAMH Boards comply with the "Sunshine Laws" and all its provisions?*

A. Yes. "Sunshine Laws" refer to Ohio's Open Meetings Act and Public Records Act. A Board is a "public body" as defined in the Open Meetings Act (O.R.C. 121.22 (B)(1) and a "public office" as defined in the Public Records Act (O.R.C. 149.0119(A).

16. *Q. Are there any requirements or regulations requiring governing board members to submit a financial disclosure statement?*

A. No. The governing board members of ADAMH Boards are not included in the categories of entities that must file financial disclosure statements pursuant to O.R.C. Chapter 102.

17. *Q. Who is an ADAMH Boards legal counsel?*

A. The county prosecutor is required to serve as legal advisor to a single-county Board. The prosecutor is not authorized, however, to serve as legal advisor to a joint-county Board, which may contract with private counsel pursuant to O.R.C. 340.04(A). A single-county Board may only contract for legal services in accordance with O.R.C. 305.14.

18. *Q. May the governing board establish an executive committee?*

A. There is no express authority for the formation of an executive committee of the governing board. Although such authority may be implied from the authority of the Board to prescribe operating procedures, the possibility of inadvertently violating requirements of the "Sunshine Law", O.R.C. 121.22, is so great that creation of an executive committee is not recommended. In any event, the executive committee cannot take any formal action on behalf of the Board.

19. *Q. Should the duties and responsibilities for all standing and ad hoc committees be included in the rules and regulations of the Board?*

A. Yes.

20. *Q. May the Board have a savings or checking account?*

A. No.

21. *Q. What is the proper procedure when a Board receives a private contribution or donation?*

A. All monetary contributions to the Board, including accrued interest of money received, must be deposited in the county treasury to the credit of the Board, for expenditure for purposes stated by the donor or grantor. Contributions of real and personal property should be applied as in the gift, grant or devise. If such property is sold, the proceeds of the sale should be deposited in the county treasury for subsequent expenditures.

22. *Q. Is it necessary for the Board to approve staff and governing board members' attendance at out-of-county workshops and meetings?*

A. Yes. The Board should ensure that some type of control is exercised over out-of-county travel. The governing board should authorize the travel of appropriate individuals and the reimbursement of actual and necessary expenses incurred as part of that travel. This can be accomplished by resolution or through a motion that is captured in meeting minutes. A blanket authorization, with or without set monetary limitations, is acceptable for this purpose, and the governing board need not make such decisions on a case-by-case basis. In addition, the governing board may choose to delegate the responsibility for making such determinations to the Executive Director of the Board. The governing board may choose to define parameters within which such decisions are to be made by the Executive Director.

23. *Q. Is the Board prohibited from granting retroactive pay to employees?*

A. No. The Attorney General has indicated in 1981 O.A.G. 81-011 that the prohibition upon retroactive compensation in Article II, Section 29, Ohio Constitution, does not apply to units of local government.

EXECUTIVE DIRECTOR

1. *Q. Is an Executive Director a member of the classified civil service?*
 - A. No.
2. *Q. May an Executive Director be held personally liable for actions of Board employees and contract providers?*
 - A. As a public officer, an Executive Director may be held liable for the actions of his/her subordinates, particularly in the area of unlawful expenditure of public money. Although he/she would not normally be answerable for the misconduct of a contract agency or its personnel, such action may involve neglect or misconduct on the part of the Executive Director and his/her subordinates, as well as the contract agency, in which case he/she could be found liable.
3. *Q. May the Board purchase liability insurance for the Executive Director out of public funds?*
 - A. Yes. As an employee of the Board, he/she is eligible for the purchase of insurance against liability arising from the performance of his/her official duties.
4. *Q. Should Executive Directors be bonded?*
 - A. The Executive Director should, for the protection of the district, be bonded for such an amount as to cover any loss which might be expected to occur as a result of fraudulent or dishonest acts, failure to perform faithfully the duties of offices, or failure to account for all monies received in the performance of official duties. The cost of this bond may be paid from public funds.
5. *Q. What methods may be used to evaluate the performance of the Executive Director?*
 - A. There are no legal requirements for evaluating the performance of the Executive Director. As each review occurs, it should be noted in the journal of proceedings. Decisions of the governing board related to provisions of employment, such as changes in compensation, should be formally adopted by the Board and also recorded in the journal of proceedings.
6. *Q. What responsibilities does the Executive Director have concerning the administration of personnel?*
 - A. The governing board and the Executive Director have separate and distinct responsibilities regarding personnel. The governing board is responsible for establishing positions, approving job descriptions and job titles, and approving compensation schedules, including both salary and fringe benefits. The Executive Director, in contrast, is responsible for the employment of specific individuals to fill positions, promoting, disciplining and discharging employees, and determining compensation within the limits of the schedules adopted by the governing board.
7. *Q. Do state statutes require confirmation or ratification by the Board of personnel actions undertaken by the Executive Director?*
 - A. No. This area is within the authority of the Executive Director. However, all such actions should be promptly reported to the governing board and duly noted in the journal of proceedings.

8. *Q. What are the respective roles of the governing board members and the Executive Director in determining the compensation of Board employees?*

A. The governing board is only responsible for fixing the specific compensation of the Executive Director. For all other positions, the governing board is responsible for the adoption of salary and fringe benefit schedules. The Executive Director is then responsible for fixing the compensation of specific employees within the limits of such schedules.

9. *Q. What official documents may the Executive Director sign on behalf of the governing board?*

A. The Executive Director may be authorized by resolution to sign documents on behalf of the governing board. It is important to note, however, that this does not include the authority to exercise discretionary powers of the governing board. Thus, where such an exercise of discretion on the part of the governing board is involved, the decision of the board must be reached at a formal meeting, duly noted in the journal of proceedings, and a resolution duly adopted authorizing the Executive Director, on behalf of the board, to sign specific documents to implement the actions of the board.

As further described in the *Contracts* section under the *Adoption and Execution* heading, Executive Directors of ADAMH Boards may also be authorized by their governing boards to execute contracts without the prior approval of the governing board in accordance with the requirements of that section.

10. *Q. What consultants may be employed by the Executive Director?*

A. The Executive Director may employ and remove such consultants as are necessary for the work of the Board, including the services of an accountant. As with other employment positions, the positions should be approved by the governing board, with the specific individuals selected and employed by the Executive Director. If it is deemed necessary to contract with a consultant on an independent contractor basis, the contract should be between the individual and the board, in compliance with the section as to contracts generally. It should be noted that the Executive Director may employ and remove consultants in the classified civil service without board approval.

11. *Q. What is the proper procedure for the removal of an Executive Director?*

A. The governing board may remove an Executive Director only by a majority vote of the full Board membership. The Executive Director may be removed only for cause, upon written charges and only after an opportunity has been afforded him/her for a hearing before the board, if such hearing has been requested.

JOURNAL OF PROCEEDINGS (MINUTE BOOK)

1. *Q. What is the suggested format for the journal of proceedings?*
 - A. The Board may choose the medium upon which it keeps such records, if it can reasonably be maintained and duplicated during the Board's normal operations. Each entry should state the date, time and location of the meeting and any pertinent details of Board actions.

2. *Q. Must all Board actions be journalized?*
 - A. Yes. As it is often put, "The Board speaks only through its journal." All formal Board actions must be properly recorded to be of effect.

3. *Q. What is meant by "public access" to the journal?*
 - A. The journal of proceedings is a public record for the purposes of O.R.C. 149.43, and as such must be available, at reasonable times, for public inspection. In addition, copies must be made available to the public at cost, upon request.

4. *Q. Who should receive copies of Board minutes?*
 - A. Copies should be provided at cost and within a reasonable time to anyone requesting them.

5. *Q. What are the requirements for the recording of Board and committee meeting minutes?*
 - A. The minutes of all meetings must be promptly recorded, filed, and maintained and shall be open to public inspection. The medium selected for this purpose is up to the Board. Statute does not require minutes to be attested to and signed by members of the governing board, however this may be a procedural requirement of a Board's bylaws or policies. Robert's Rules of Order provides the guidance that minutes should be signed by a body's secretary and potentially the President/Chair to establish their authenticity.

6. *Q. How long must official minutes be retained?*
 - A. The Ohio History Connection recommends permanent retention of meeting minutes.

7. *Q. Within how many days following a governing board meeting should minutes be sent to appropriate persons?*
 - A. Unless otherwise provided in the rules of the Board, there is no requirement that minutes be sent out. The minutes must, however, be promptly recorded and open to public inspection.

CONTRACTS

1. *Q. What are the recommended minimal provisions of a contract between a Board and a contract provider?*
 - A. This is a complex topic, and reference should be made to the contracts portion of this Handbook, as well as requirements of OhioMHAS and legal counsel should be consulted. However, provisions concerning the following topics are recommended: (1) Modification and Cancellation; (2) Audit Provisions; (3) Property; (4) Civil Rights Provisions; and (5) Methods of Payment.

2. *Q. Must such contracts be certified as to the availability of funds by the county auditor?*
 - A. Yes. This is required by O.R.C. 5705.41 (D). The county auditor must certify that sufficient funds have been lawfully appropriated for the purpose in question, are in the treasury or in the process of collection and are free from encumbrances.

3. *Q. What formal action is required by a Board for approval of a contract?*
 - A. Except for contracts for which the governing board has authorized the Executive Director to sign contracts without its prior approval in accordance with O.R.C. 340.03(F), the governing board should adopt a resolution approving the contract in question and designating those representatives of the Board, such as the president and the Executive Director, who are to sign the contract on behalf of the Board.

4. *Q. May a Board contract with a for profit for the provision of mental health and addiction services and supports?*
 - A. Yes. There is no statutory requirement that contracts be restricted to non-profit corporations.

5. *Q. Does HIPAA require a Board to enter into a Business Associate Agreement (BAA) with its contract providers?*
 - A. In most cases – no. A Business Associate is a person or entity who “performs functions or activities on behalf of or provides certain services to” a covered entity for which access to the covered entity’s PHI is necessary. A Business Associate Agreement (BAA) is not required, and does not make legal sense to enter into, when the other entity is simply performing a function that is typically performed by that type of entity or if the activity is part of treatment, payment, health care operations or is required by law.

Examples: billing management, claims or data processing, utilization review, accounting, legal, data analysis, actuarial, accounting, consulting, data aggregation, management, administrative, medical transcription services, accreditation, financial services, health information organizations, and e-prescribing gateways.

In most instances, Boards are not performing services on behalf of providers for which a BAA is necessary.

The following is from the HHS website in regard to circumstances when a BAA is not required:

Other Situations in Which a Business Associate Contract Is NOT Required:

When a health care provider discloses protected health information to a health plan for payment purposes, or when the health care provider simply accepts a discounted rate to participate in the health plan's network. A provider that submits a claim to a health plan and a health plan that assesses and pays the claim are each acting on its own behalf as a covered entity, and not as the "business associate" of the other.

There may be some instances where Boards do actually perform an activity or service on behalf of a provider, such as report creation, data entry/aggregation or another administrative-type service. In those cases, a BAA would need to be entered into between the Board and provider for the provider to disclose PHI to the Board to perform those services. The Board would still be considered to be a covered entity under HIPAA in its own role as a health plan but would also be performing the role of a business associate when it performs a function on behalf of the provider.

6. *Q. Must a contract for the provision of mental health and/or addiction services and facilities be only for a one-year period?*
 - A. No. O.R.C. 340.036(A) provides the authority for ADAMH Boards to enter into contracts with public and private providers without a restriction regarding the duration of the contract. Thus, there is no statutory restriction that the contract be limited to one year.

7. *Q. Are ADAMH Boards permitted to agree to hold harmless and indemnification provisions contained in a contract?*
 - A. There is not a specific Ohio Revised Code provision that prohibits ADAMH Boards from agreeing to indemnification/hold harmless contract provisions. Rather, there is an entire body of law that prevents a public body from incurring financial obligations that are generally unknown at the time the contract is made. Whether a particular provision is valid and enforceable will depend on the terms of the clause. Legal advice should be sought when there is an indemnification clause in a contract to determine whether it is valid.

COUNTY BUDGET COMMISSION

1. *Q. What is the make-up of the county budget commission?*
 - A. The county budget commission consists of the county auditor, the county treasurer and the county prosecutor. Two (2) elected members may be added by vote of the people. *O.R.C. 5705.27*. A joint-county budget commission consists of the members of the budget commissioners of all counties within the territory over which the joint-county district is located.

2. *Q. What are the general responsibilities of the county budget commission with respect to a Board?*
 - A. The responsibilities of the county budget commission with respect to Boards do not differ from the county budget commission's responsibilities to other governmental agencies within the county. In summary, these include:
 - (1) Adjusting the estimated amounts required from the general property tax for each fund, so as to bring the tax levies within the limitations of *O.R.C. 5705.01 to 5705.47*;
 - (2) Revising and adjusting the estimate of balances and receipts from all sources for each fund, determining the total appropriations that may be therefrom;
 - (3) Reducing any tax levy which is not shown by the tax budget of the subdivision to be clearly required; and
 - (4) Certifying to the taxing authority of the subdivision the action it has taken, including the rate of tax to be levied.

3. *Q. What information must be submitted to the county budget commission?*
 - A. The tax budget filed with the county auditor on or before the twentieth of July will be submitted by him/her to the county budget commission on or before its meeting on the first Monday of August. The commission must also be given "such other information as the commission requests or the tax commissioner prescribes." *O.R.C. 5705.31*.

4. *Q. What additional information may the county budget commission request from a Board?*
 - A. This is a discretionary matter for the county budget commission.

5. *Q. May a Board call a meeting with the county budget commission?*
 - A. *O.R.C. 5705.32(E)(2)* provides that representatives of a subdivision are entitled to appear before the commission to explain their financial needs before the final determination of the amount to be allocated to them from any source. Additional meetings may be requested at other times.

6. *Q. Is the county budget commission authorized to reduce the millage of tax levies approved by the voters?*
 - A. Yes. Approval of a tax levy by the voters merely authorizes the levy of a tax if the taxing budget of the subdivision shows it to be clearly required. If not, the county budget commission is required to reduce the millage to an appropriate level. *O.R.C. 5705.341*.

7. *Q. May the county auditor reduce levy millage other than through the county budget commission?*
- A. If the rate of taxation contains a fraction other than a decimal fraction or a decimal fraction less than one-tenth of a mill, it may be adjusted by the county auditor. If it is less than one-twentieth of a mill, the fraction should be dropped. If it is more than one-twentieth of a mill and less than one-tenth of a mill, the difference between the fraction and one-tenth of a mill shall be added to the rate. Any other restrictions require action of the county budget commission.
8. *Q. Where a joint-county ADAMH Board requests an appropriation from the board of county commissioners, must it submit budgetary information only insofar as it relates to that county, or must it submit information as to the total budget of the district?*
- A. As a district authority requesting an appropriation, the joint-county district, through the Board, must submit an estimate of contemplated revenues and expenditures to the taxing authority (the board of county commissioners) much as if it were a single-county Board. This information must be for the district as a whole, and not merely that portion directly affecting the county in question.
9. *Q. May the county auditor decline to collect fractions of millage approved by the electorate?*
- A. Yes. (See Question 7, above.)
10. *Q. If unanticipated revenues become available during the year which are not reflected in an official certificate of estimated resources, what steps must be taken before these additional funds may be expended?*
- A. As the fiscal officer of the district, the county auditor must certify the amount of such receipts to the county budget commission, which will then certify an amended official certificate of estimated resources reflecting the additional revenue. The additional revenue must then be appropriated by the taxing authority (a joint-county ADAMH board or the board of county commissioners) before it may be expended.

COUNTY AUDITOR

1. *Q. What is the role of the county auditor with respect to ADAMH Boards?*
 - A. The county auditor serving as fiscal officer for the Board, whether joint-county or single-county, is responsible for the preparation of warrants upon recommendation of the Board and maintenance of the financial records of the Board in accordance with the Uniform System of Accounting prescribed by the Auditor of State.
2. *Q. Is the county auditor's office authorized to make charges against the Board accounts without prior notification and approval by the Board?*
 - A. Yes. He or she may on occasion be required to make such charges. For example, audit costs may be charged in this fashion.
3. *Q. May Boards request a detailed analysis of cash summary totals from the county auditor on a monthly basis?*
 - A. The Board may request such information from the county auditor as it deems necessary. If he or she is unwilling or unable to provide such information, Board employees are entitled to reasonable access to such information in the county auditor's records as they require.
4. *Q. Is the Board required to file a budget with the county auditor for the ensuing fiscal year?*
 - A. Yes. A Board must adopt a tax budget and file it with the county auditor serving as fiscal officer by July 20 for the fiscal year commencing the following January 1. In addition, the annual appropriation measure must be certified by the county auditor before any expenditures may be made. O.R.C. 5205.39.
5. *Q. Must the Board reconcile its accounts on a monthly basis with the county auditor?*
 - A. It is essential that such a reconciliation be conducted on a regular basis. The auditor must submit to the Board a detailed monthly statement of all receipts, disbursements and ending balances. O.R.C. 340.10.
6. *Q. Is the county auditor required to keep accounts that differentiate between local, state and federal funds?*
 - A. The county auditor is required to keep accounts in accordance with the provisions of O.R.C. Chapter 5705 and Bureau Form 4260 - Classification of Receipts and Appropriation of Accounts for Counties, which is published by the Auditor of State. This system of accounting clearly differentiates such funds.
7. *Q. How is interest in county investments to be apportioned to the various districts and subdivisions?*
 - A. Interest on money in the county treasury is to be paid into the county general fund, rather than into the fund to which the principal belongs. O.R.C. 135.351.

LEVIES

1. *Q. Are the county Boards of election required to provide to an ADAMH Board, upon request, the appropriate statutory authority, required wording, millage, duration, and dates for levy?*
 - A. No. This is the responsibility of the taxing authority (the county commissioners or a joint-county Board) in its preparation of the appropriate resolution.

2. *Q. What levies are permissible for ADAMH Boards?*
 - A. Either a joint-county ADAMH Board or a board of county commissioners may seek a tax levy under O.R.C. 5705.191 to supplement the general fund for the purpose of making appropriations for human or social services. A joint-county Board may also seek a tax levy pursuant to O.R.C. 5705.19(A) for the current expenses of the Board or pursuant to 5705.19(F) for the construction or acquisition of any specific permanent improvement or class of improvements. In addition, a board of county commissioners may seek a tax levy under O.R.C. 5705.221, for either a single-county Board district or the county's contribution to the joint-county Board district of which the county is a part, for the operation of mental health and addiction services programs and the acquisition, construction, renovation, financing, maintenance, and operation of alcohol, drug addiction, and mental health facilities.

3. *Q. Are Boards permitted to campaign for their levies?*
 - A. Yes, ADAMH Boards are unique in that they are exempted from the general prohibition against political subdivisions using public funds to communicate or distribute information that supports the passage of a levy. This exception is a result of ADAMH Boards having the statutory duty under ORC 340.03(A)(7) to “recruit and promote local financial support...from private and public sources...”. See the *Levy Campaigns* heading in the *Funding* section for more information.

STATE AUDITING PROCEDURES

1. *Q. Are assistant state auditors required to conduct a post-audit or exit conference upon completion of the audit?*
 - A. The Executive Director and representative of the Board will normally be invited to an exit conference to discuss the results of the audit. This is not required by law and may not occur if the confidentiality of exit conferences has been breached in the past by the subdivision under audit.

2. *Q. May the results of the audit, as revealed in the exit conference, be appealed by the Board?*
 - A. Yes. The Board may, within five (5) working days of the exit conference, submit a letter of rebuttal, which will be carefully considered in the normal review process.

3. *Q. May findings for recovery be paid prior to release of the audit report?*
 - A. Yes. If findings for recovery are paid prior to release of the audit report, the Auditor of State should be notified immediately so that a notation may be inserted in the report to the effect that the amounts in question were repaid while under audit.

4. *Q. May the Board request a special audit of the Board, outside formal examination schedule?*
 - A. Yes. Whether such a request will be granted will depend on audit schedules, available personnel and information submitted by the Board in support of its request.

5. *Q. May the Board request an audit of a contract agency?*
 - A. Yes. Such requests will be treated in the same manner as requests for special audits, with the same evaluative criteria in use.

(Note: This should not be confused with audits required by law to be carried out pursuant to O.R.C. 340.03 (A)(6).)

AUDITING TERMS

Auditing Terms

ANNUAL BUDGET - A budget applicable to a single fiscal year.

APPROPRIATION - An authorization granted by a legislative body to make expenditures and to incur obligations for specific purposes. (NOTE: An appropriation is usually limited as to the time when it may be expended.)

APPROPRIATION ACCOUNT - A budgetary account set up to record specific authorizations to spend. The account is credited with original and supplemental appropriations and is charged with expenditures and encumbrances.

APPROPRIATION EXPENDITURE - An expenditure chargeable to an appropriation. (NOTE: Since virtually all expenditures of governmental units are chargeable to appropriations, the term EXPENDITURES by itself is widely and properly used.)

APPROPRIATION LEDGER - A subsidiary ledger containing an account for each appropriation. Each account usually shows the amount originally appropriated and encumbered, transfers to or from the appropriation, amounts charged against the appropriation, the unencumbered balance, and other related information. If allotments are made and a separate ledger is maintained for them, each account in the appropriation ledger usually shows the amount appropriated, transfers to and from the appropriation, the amount allotted and the unallotted balance.

BLANKET CERTIFICATION - The procedure by which a fiscal officer issues a certificate against an appropriation fund for a maximum amount set by the Board for a period not extending beyond the end of the fiscal year, and a purchase order is used to post charges against the appropriation fund without the necessity of issuing a certificate each time an item is needed.

BUDGET - A plan of financial operation embodying an estimate of proposed expenditures for a given period and the proposed means of financing them. Used without any modifier, the term usually indicates a financial plan for a single fiscal year. (NOTE: The term "budget" is used in two senses in practice. Sometimes it designates the financial plan presented to the appropriating body for adoption and sometimes the plan finally approved by that body).

BUDGETARY ACCOUNTS - Those accounts which reflect budgetary operations and conditions, such as estimated revenues, appropriations, and encumbrances, as distinguished from proprietary accounts.

BUDGETARY CONTROL - The control or management of a governmental unit or enterprise in accordance with an approved budget for the purpose of keeping expenditures within the limitations of available appropriations and available revenues.

CASH BASIS - The basis of accounting under which revenues are recorded when received in cash and expenditures are recorded when paid.

DEBT - An obligation resulting from the borrowing of money or from the purchase of goods and services. Debts of governmental units include bonds, notes, and floating debt.

DEBT LIMIT - The maximum amount of gross or net debt which is legally permitted.

DEFICIT - (1) The excess of the liabilities and reserves of a fund over its assets; (2) The excess of expenditures over revenues during an accounting period, or (3) in the case of Enterprise and Internal Service Funds, the excess of expense over income during an accounting period.

DISBURSEMENT - An expenditure of paying out of money from the appropriation account.

DISTRICT - A sub-unit of the government, established to provide services of a specific nature to a limited geographical area; e.g., an ADAMH Board service district.

ENCUMBER - To charge against a specific appropriation item and set aside appropriated funds for the obligation established by purchase order.

ENCUMBRANCES - Obligations in the form of purchase orders, contracts, or salary commitments which are chargeable to an appropriation and for which a part of the appropriation is reserved. They cease to be encumbrances when paid or when the actual liability is set up.

EXPENDITURES - Where the accounts are kept on a cash basis (q.v.), the term designates only actual cash disbursements for these purposes. (NOTE: Encumbrances are not expenditures.)

FIDELITY BOND - A written promise to indemnify against losses from theft, falsification, and misappropriation of public funds by government officers and employees.

FISCAL YEAR - The calendar year of twelve months to which the annual budget applies.

FUND - An independent fiscal and accounting entity with a self-balancing set of accounts recording cash and/or other resources together with all related liabilities, obligations, reserves and equities which are segregated for the purpose of carrying out specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

FUND ACCOUNT - Any one specific fund comprising a specific sum of money set aside for a particular purpose.

FUND ACCOUNT NUMBER - A numeric code established to identify a fund account.

GRANT - A contribution by one governmental unit to another unit. The contribution is usually made to aid in the support of a specified function (for example, education), but is sometimes also for general purposes.

INTER-FUND TRANSFERS - Amounts transferred from one account to another across funds by amendment of the appropriation resolution.

INTRA-FUND TRANSFERS - Amounts transferred from one account to another within the same fund by amendment of the appropriation resolution.

JOURNAL OF PROCEEDINGS - A journal in which the official records of the proceedings are kept; also referred to as minute book.

LEDGER - A book of final entry in which a record of debits, credits, and all money transactions is kept. Ledger is used to record expenditure transactions.

LEVY - To assess a levy (assess, exact, raise, or collect a tax).

POLITICAL SUBDIVISION - A county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

PUBLIC MONEY - Any money received, collected by or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.

PUBLIC OFFICE – Any state agency, public institution, political subdivision, other organized body, office, agency, institution or entity established by the laws of this state for the exercise of any function of government.

PUBLIC RECORD – Any record that is kept by any public office, including, but not limited to, state, county, village, township and school district units. See Ohio Revised Code 149.43 for exceptions.

PURCHASE ORDER - A pre-numbered document which authorizes the delivery of specified merchandise or the rendering of certain services, and the making of a charge for them.

RECEIPTS - This term, unless otherwise qualified, means cash received.

REQUISITION - A written order, usually from one department to the purchasing officer or to another department, for specified articles or services.

RESOLUTION - A special or temporary order of legislative body; an order of a legislative body requiring less legal formality than an ordinance or statute.

REVENUE - Public monies from taxes, fines, fees, or levies. These monies are collected by the township, state or county. Some are apportioned or distributed by the state or county.

STATUTE - A particular law enacted and established by the will of the legislative department of government, for instance, state government; also, used to designate written law as compared to unwritten law.

STATUTORY AUTHORITY - That which is required by specific wording of the statute or law; also required by statute or conforming to statute.

SUPER BLANKET CERTIFICATION - The procedure by which a fiscal officer issues a certificate against a specific line item appropriation account for most professional services, fuel, oil, food items, and other specific recurring and reasonably predictable operating expenses, for a period not extending beyond the end of the fiscal year, using a purchase order to post charges against the appropriation fund without the necessity of issuing a certificate each time an item is needed.

SURETY BOND - A written promise to indemnify against loss caused by named parties through non-performance or defalcation.

TAX - To impose a tax; to enact or declare that monies shall be paid by persons liable for the support of government; for instance, a township levy for fire protection.

TAX ANTICIPATION NOTES - Notes issued in anticipation of collection of taxes, usually retireable only from tax collections, and frequently only from the proceeds of the tax levy whose collection they anticipate.

TAX RATE - The amount of tax stated in terms of a unit of the tax base; for example, 25 mills per dollar of assessed valuation of taxable property.

TRANSACTION - Act of conducting any business, management, or affairs of the subdivision.

TREASURY - A place where public revenues are kept recorded in the books of account after depositing them, and the record of where money is disbursed to defray the expense of government.

TRUST FUND - A fund consisting of resources received and held by the governmental unit as trustee to be expended or invested in accordance with the conditions of the trust.

UNENCUMBERED APPROPRIATION - That portion of an appropriation not yet expended or encumbered.

ADDITIONAL RESOURCES

ADDITIONAL RESOURCES

Ohio Association of County Behavioral Health Authorities
175 South Third Street, Suite 900
Columbus, Ohio 43215
(614) 224-1111
www.oacbha.org

Ohio Department of Mental Health and Addiction Services
30 East Broad Street, 36th Floor
Columbus, Ohio 43215
(614) 466-2596
mha.ohio.gov

Public Employees Retirement System
277 East Town Street
Columbus, Ohio 43215
(800) 222-27377
www.opers.org

Ohio Ethics Commission
30 West Spring Street
Columbus, Ohio 43215
(614) 466-7090
www.ethics.ohio.gov

Auditor of State
88 E. Broad St., 5th Floor
Columbus, OH 43216
(800) 282-0370 or (614) 466-4514
<https://ohioauditor.gov>

Public Inquiries: 800-282-0370 or 614-466-4514

Media Inquiries: 614-644-1111

Legal Counsel: 800-282-0370

Fraud Hotline: 866-FRAUD-OH (866-372-8364)

AUDITOR OF STATE

AUDITOR OF STATE

Auditor Keith Faber and his senior staff members direct the Auditor of State's office in its mission to provide efficient, effective, and transparent government to Ohioans.

- Sloan Spalding - Chief of Staff
- Robert Hinkle - Chief Deputy Auditor
- Tim Keen - Senior Advisor to the Auditor and Chief Financial Officer
- Alex Bilchak - Deputy Chief of Staff, External Relations
- Fred Shimp - Deputy Chief of Staff, Operations
- Mary DeGenaro - Chief Legal Counsel
- Matt Eiselstein - Director of Communications
- Thomas Hancock - Legislative Director

Chief of Staff..... Sloan Spalding
stspalding@ohioauditor.gov

Deputy Chief of Staff, External Relations Alex Bilchak
asbilchack@ohioauditor.gov

Deputy Chief of Staff, Operations Fred Shimp
fmshimp@ohioauditor.gov

Chief Deputy Auditor... Robert Hinkle
rrhinkle@ohioauditor.gov

Assistant Chief Deputy AuditorMarnie Fredrickson
mafredrickson@ohioauditor.gov

Assistant Chief Deputy Auditor..... Ami Mayne
ammayne@ohioauditor.gov

Chief Financial Officer/Senior Advisor Tim Keen
tskeen@ohioauditor.gov

Chief Legal Counsel..... Mary DeGenaro
mdegenaro@ohioauditor.gov

Deputy Chief Legal Counsel Nadia Wenrick
njwenrick@ohioauditor.gov

Director of Communications..... Matt Eiselstein
mreiselstein@ohioauditor.gov

Deputy Director of Communications Robert Abel
rpabel@ohioauditor.gov

Legislative Director..... Thomas Hancock
tehancock@ohioauditor.gov

Toll Free..... **(800) 282-0370**
Fax..... **(614) 466-4490**

DEPARTMENT ORGANIZATION

Administration	Legal	Financial Audit	Performance Audit	Policy	Investigations	Public Affairs
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Administration

Human Resources The Human Resources section performs all personnel-related duties within the Auditor of State’s office including recruiting, payroll processing, and managing employee benefits.

Director of Human Resources..... Cynthia Becker
ckbecker@ohioauditor.gov

Finance This section is responsible for all financial and cost-management functions for the Auditor of State’s office. Responsibilities include payroll, purchasing, accounts receivable, accounts payable, facilities, and fleet management, and budget and financial reporting.

Finance Director..... Kim Eckert
kleckert@ohioauditor.gov

Information Technology (IT) Information Technology develops and maintains the technology and administrative services in the Auditor of State’s office, giving employees convenient and timely access to the office’s computer network. It also provides communication support and recordkeeping functions, including graphics, document printing and records retention.

Chief Information Officer..... David Potts
dbpotts@ohioauditor.gov

Uniform Accounting Network (UAN) The Uniform Accounting Network is a computerized, integrated financial management and information system serving local governments. The UAN division provides entities with the software, technology, training, and support for public officials to apply required accounting standards to their financial recordkeeping.

Director of Uniform Accounting Network (UAN)..... Tim Moloney
tpmoloney@ohioauditor.gov

UAN Support Line..... (800) 833-8261

Legal

Legal Counsel The Counsel offers legal guidance to the team of auditors who represent the Auditor of State’s office when working with state and local entities. The legal department will provide relevant legal authority to constituents to share with their respective legal counsel concerning matters related to an audit.

Deputy Chief Legal Counsel Nadia Wenrick
njwenrick@ohioauditor.gov

Open Government Unit The Open Government Unit provides local officials and citizens with training and resources to help them better understand their rights and obligations under the Ohio Public Records Act and the Ohio Open Meetings Act. Staff attorneys from the AOS Legal Division and a full-time paralegal serve as the office’s experts on public records and open meetings. At the request of local officials, the office offers training seminars and other educational resources on Sunshine Laws.

Toll Free..... (888) 877-7760

Financial Audit

Center for Audit Excellence The Center for Audit Excellence is responsible for the development of auditing standards of practice and quality assurance based on national standards and Ohio law. Through regular training, the center ensures that all employees working for the Auditor of State are up to date on these standards.

Chief of Quality Assurance..... William Blake
wbblake@ohioauditor.gov

Chief of Professional Standards..... Rhonda Kline
rklkline@ohioauditor.gov

Director of Professional Education and Training..... Kimberly Dodds
ksdodds@ohioauditor.gov

Financial Audit Group The Financial Audit Group is responsible for conducting financial audits of all public entities as required under Ohio law. Generally, the Auditor of State’s office is required to perform these financial audits at least once every two fiscal years. The office must review the methods, accuracy and legality of the accounts, financial reports, records, and files of all public entities.

State Audit Region Chief Auditor Jacqueline McKee
jemckee@ohioauditor.gov

Toll Free..... (800) 443-9275

Local Audit Regions:

Regional Office	Chief Auditor	Counties Served	Phone
Central	Stacie Scholl slscholl@ohioauditor.gov	Ashland, Crawford, Delaware, Fairfield, Franklin, Holmes, Knox, Licking, Madison, Marion, Morrow, Pickaway, Richland, Union, Wayne	(800) 443-9275
East	Joey Jones jjones@ohioauditor.gov	Carroll, Columbiana, Jefferson, Mahoning, Portage, Stark, Summit, Trumbull	(800) 443-9271
Northeast	Allen Allred akallred@ohioauditor.gov	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina	(800) 626-2297
Northwest	Jonathan Lawless jalawless@ohioauditor.gov	Defiance, Erie, Fulton, Hancock, Henry, Huron, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, Wood, Wyandot	(800) 443-9276

**Local Audit Regions:
(Continued)**

Regional Office	Chief Auditor	Counties Served	Phone
Southeast	Denise Blair dablair@ohioauditor.gov	Athens, Belmont, Coshocton, Gallia, Guernsey, Harrison, Hocking, Jackson, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Tuscarawas, Vinton, Washington	(800) 441-1389
Southwest	Cristal Jones crjones@ohioauditor.gov	Adams, Brown, Butler, Clermont, Clinton, Fayette, Hamilton, Highland, Lawrence, Pike, Ross, Scioto, Warren	(800) 368-7419
West	Donna Waldron dkwaldron@ohioauditor.gov	Allen, Auglaize, Champaign, Clark, Darke, Greene, Hardin, Logan, Mercer, Miami, Montgomery, Preble, Shelby, Van Wert	(800) 443-9274

Local Government Services (LGS) The Local Government Services section serves as a consulting and fiscal advisory group to all governmental agencies and subdivisions. It provides an array of services including, but not limited to, financial forecasts, GAAP conversion assistance, annual financial report processing, record reconstruction and reconciliation, fiscal watch or emergency assistance, and financial management training for elected officials.

Chief of Local Government Services David Thompson
dbthompson@ohioauditor.gov

Assistant Chief of Local Government Services Timothy Lintner
tjlintner@ohioauditor.gov

Phone (for all regional contacts) **(800) 345-2519**

LGS Region	Chief Project Manager	Counties Served
Northeast	Tisha Turner taturner@ohioauditor.gov	Ashland, Ashtabula, Carroll, Columbiana, Coshocton, Cuyahoga, Erie, Geauga, Harrison, Holmes, Huron, Knox, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, Wayne
Northwest	Cynthia McCafferty camccafferty@ohioauditor.gov	Allen, Auglaize, Champaign, Crawford, Defiance, Delaware, Fulton, Hancock, Hardin, Henry, Logan, Lucas, Marion, Mercer, Morrow, Ottawa, Paulding, Putnam, Sandusky, Seneca, Union, Van Wert, Williams, Wood, Wyandot

(Continued)

<u>LGS Region</u>	<u>Chief Project Manager</u>	<u>Counties Served</u>
Southeast	Michelle Wears mrwears@ohioauditor.gov	Athens, Belmont, Fairfield, Gallia, Guernsey, Hocking, Jackson, Jefferson, Lawrence, Licking, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Vinton, Washington
Southwest	James McCoy jemccoy@ohioauditor.gov	Adams, Brown, Butler, Clark, Clermont, Clinton, Darke, Fayette, Franklin, Greene, Hamilton, Highland, Madison, Miami, Montgomery, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Warren
Chief Technical Specialist	Tracie McCreary tlmccreary@ohioauditor.gov	Administrative projects and support to regions

Medicaid Contract Audit Section The Medicaid Contract Audit Section is a standalone department under the Audit Division dedicated to ensuring that Ohio’s Medicaid dollars are not illegally spent or wasted by those working under contract with state agencies.

Chief Auditor.....Kristi Erlewine
kserlewine@ohioauditor.gov

Performance Audit

Ohio Performance Team (OPT) The Ohio Performance Team (OPT) conducts performance audits of state agencies. Unlike financial audits where the focus is on an agency’s past activities, OPT ensures efficient use of Ohio’s tax dollars by functioning like a consulting group with a proactive, forward focus.

The team identifies areas of inefficiency or low effectiveness in public-sector entities and provides recommendations for corrective action. By law, the Auditor of State is authorized to conduct a performance audit for any school district or local government in fiscal caution, fiscal watch, or fiscal emergency. Audit results help entities in fiscal distress improve the cost effectiveness of operations and resolve their financial difficulties.

Director of OPT.....Nicole Smith
nlsmith@ohioauditor.gov

Policy

Policy and Legislative Affairs The Policy and Legislative Affairs section serves as a link between the Auditor of State’s office and the Ohio General Assembly. This section ensures that state senators and representatives understand the duties and needs of the office and also provides legislators with information to make well-informed decisions on legislation affecting the Auditor of State’s office.

Legislative Director..... Thomas Hancock
tehancock@ohioauditor.gov

Investigations

Special Investigations Unit (SIU) The mission of the Special Investigations Unit is to promote transparency and accountability in the use of public funds, to expose fraud and corruption where it exists, and to assist law enforcement and prosecutors in the pursuit of justice.

Composed of forensic auditors, investigators and attorneys, the team has decades of experience and working relationships with law enforcement at the local, state and federal levels. Their expertise allows them to take a case from initial complaint through conclusion. In cases where local officials have conflicts that make them unable to conduct investigations, the SIU brings independence.

Director of SIU Randall Turner
returner@ohioauditor.gov

Fraud Hotline..... (866) FRAUD-OH (866-372-8364)

Public Affairs

Public Affairs The Public Affairs section serves as a liaison between the Auditor of State's office and the news media. The section is responsible for all internal and external communications and publications. Public Affairs also issues news releases and manages the content of the office's website, ensuring that the public - through the news media and the Internet - has timely, accurate information about the activities of the office.

Regional Liaisons Regional Liaisons have the responsibility of field operations in each of the Auditor of State's eight local offices: Canton, Cambridge, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and the State region. The liaisons serve as a link between the Auditor of State's office and the public, local officials and constituents.

Director of Regional Liaisons..... James Coyne
jmcoyne@ohioauditor.gov



Ohio Association of County Behavioral Health Authorities

www.oacbha.org
(614) 224-1111

