



March 30, 2006

**Executive Council:**

**William Mateer**  
Wayne & Holmes ADAMH  
President

**Karen J. Scherra**  
Clermont ADAMH  
President-Elect  
Secretary

**David L. Schaffer**  
Mahoning ADAS  
Past President  
Treasurer

**Earl L. Cecil**  
Athens, Hocking & Vinton  
ADAMH

**Russell S. Kaye, PhD**  
Cuyahoga ADAS

**Sherry L. Knapp, PhD**  
Hamilton ADAS

**Ron Marian, MS**  
Mahoning CMH

**Ronald J. Rees, MPA**  
Washington ADAMH

**David A. Royer**  
Franklin ADAMH

**Precia Shenk Stuby**  
Hancock ADAMH

**Randy Zumbar**  
Summit ADAMH

Dear ADAS/ADAMH/CMH Board Executive Director:

The Ohio Association of County Behavioral Health Authorities is pleased to provide you with this copy of the *Behavioral Health Handbook*, which we trust will be a valuable tool to you and your staff as you strive to establish a culture of quality within your Board area.

The *Behavioral Health Handbook* is a comprehensive reference guide that identifies and explains the vast majority of the laws in Ohio that pertain to the operational duties and responsibilities of community alcohol, drug addiction and mental health Boards. In addition, this Handbook provides guidance that should help make complying with these laws easier – something you will not find elsewhere. Ultimately, it is intended to ensure that your Board has the tools it needs to operate efficiently and cost effectively and should help better prepare you for your annual audit.

The *Behavioral Health Handbook* represents the culmination of many hours of drafting, reviewing and revising that would not have been possible without the Auditor of State Betty Montgomery, for whose assistance we are very grateful. We believe that members of OACBHA will find this document to be of value and benefit; hopefully, it will help make your difficult job a little easier.

Sincerely,

  
Cheri L. Walter  
CEO





**Auditor of State  
Betty Montgomery**

March 10, 2006

Ms. Cheri Walter, Chief Executive Officer  
Ohio Association of County Behavioral Health Authorities  
33 North High Street, Suite 500  
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 audit related issues. Please be aware that this handbook replaces the Auditor of State's Community Mental Health Handbook.

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

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

Also, the Auditor of State's 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 address and toll free numbers, are set forth in the appendix. We would be happy to help you in any way we can at your request. We look forward to working with you in the coming years. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Betty Montgomery".

Betty D. Montgomery  
Auditor of State



*Ohio Association of*

---

COUNTY  
BEHAVIORAL  
HEALTH  
AUTHORITIES

An outline map of the state of Ohio, positioned to the right of the text 'COUNTY BEHAVIORAL HEALTH AUTHORITIES'. The map is a simple black outline of the state's geographical shape.

# **Behavioral Health Handbook**

Ohio Association of County Behavioral Health Authorities  
33 North High Street, Suite 500  
Columbus, Ohio 43215  
(614) 224-1111 (614) 224-2642 fax  
[www.oacbha.org](http://www.oacbha.org)

*March 2006*



# TABLE OF CONTENTS

	<u>PAGE</u>
<b>PREFACE</b> .....	v
<b>I. ALCOHOL, DRUG ADDICTION, AND MENTAL HEALTH SERVICE DISTRICTS</b> .....	1
PURPOSE AND AUTHORITY .....	1
ESTABLISHMENT OF ADAMH SERVICE DISTRICTS .....	1
ESTABLISHMENT OF SEPARATE ADAS BOARD AND CMH BOARD IN CERTAIN COUNTIES ....	2
ACCOUNTABILITY .....	2
State/County Agency Accountability .....	3
Department of Mental Health.....	3
Department of Alcohol and Drug Addiction Services.....	3
Board of County Commissioners .....	4
Auditor of State .....	4
<b>II. ADAMH/CMH/ADAS BOARD GOVERNANCE</b> .....	7
Establishment of Board .....	9
Appointment of Board Members .....	9
Additional Eligibility Requirements of Board Members .....	9
Oath of Office .....	10
Quorum .....	10
Conflicts of Interest .....	10
Education Requirement.....	11
Length of Term .....	11
Vacancy .....	11
Resignation .....	11
Removal .....	11
Compensation .....	11
Standing Committee on Alcohol and Drug Addiction Services .....	12
<b>III. ADAMH/CMH/ADAS BOARD POWERS AND DUTIES</b> .....	13
<b>POWERS AND DUTIES OF ADAMH AND CMH BOARDS</b> .....	15
Community Mental Health Planning Agency.....	15
Review and Evaluation .....	16
Community Support System .....	17
Hospitalization of Mentally Ill Patients .....	18
Commitments to State Psychiatric Hospitals .....	18
Voluntary Admission .....	18
Involuntary Admission.....	18
Application for Continued Commitment .....	19
Rights of Mentally Ill Persons .....	19
Housing.....	19
Adult Care Facility Referrals.....	19
Annual Report .....	20
Direct Provision of Services or Operation of Facilities .....	20
Supervision of Shelters for Runaways.....	21

## TABLE OF CONTENTS (Cont'd)

	<u>PAGE</u>
POWERS AND DUTIES OF ADAMH AND ADAS BOARDS .....	21
Alcohol and Drug Addiction Services Planning Agency.....	21
Priority Setting and Plan Development.....	22
Review, Evaluation and Auditing .....	22
Annual Report.....	22
Applications for Funding .....	22
Working Agreements with Other Entities.....	22
Direct Operation of Programs .....	22
POWERS AND DUTIES OF ADAMH, CMH, AND ADAS BOARDS .....	23
Investigate Abuse or Neglect Complaints .....	23
Audit .....	23
Financial Support.....	24
Contracts – O.R.C. 340.03 and 340.033 Considerations .....	24
Contracts – Other Considerations .....	24
General Form and Procedure .....	24
Certification .....	25
Adoption and Execution .....	25
Terms .....	25
Property .....	25
Fringe Benefits.....	26
Civil Rights Provisions .....	26
Clients' Rights .....	26
Method of Payment .....	26
Consultants .....	27
Fee Schedules .....	27
Governing Documentation and Performance of Necessary Duties.....	27
Consumer Involvement .....	27
Gifts, Grants and Bequests.....	27
Liability.....	27
Meetings.....	28
<b>IV. OFFICERS AND EMPLOYEES .....</b>	<b>29</b>
<b>COMPENSATION .....</b>	<b>31</b>
Authority .....	31
Retroactive Compensation .....	31
Overtime Pay .....	32
Fringe Benefits .....	32
Sick Leave .....	32
<b>EXPENSES .....</b>	<b>32</b>
Reimbursement .....	33
Necessary Expenses .....	33
Mileage .....	33
Limitation on Amount .....	33
Other Limitations .....	33
<b>PUBLIC EMPLOYEES RETIREMENT SYSTEM .....</b>	<b>34</b>
Exclusions and Exemptions .....	34

**TABLE OF CONTENTS** (Cont'd)

	<u>PAGE</u>
Funding and Service .....	34
Contract Agencies .....	35
UNEMPLOYMENT COMPENSATION .....	35
Exclusions from Coverage .....	35
Funding and Benefits .....	36
Collective Bargaining .....	36
CONFLICT OF INTEREST .....	36
Unlawful Interest in Public Contract .....	36
Ohio Ethics Law .....	37
Incompatibility of Office .....	39
Other Limitations .....	39
BONDING .....	40
LIABILITY .....	40
EXECUTIVE DIRECTOR .....	42
Appointment and Qualification .....	42
Compensation .....	42
Duties .....	42
Removal .....	43
LEGAL COUNSEL .....	43
Single-County Boards .....	43
Joint-County Boards .....	43
Private Counsel .....	44
CONSULTANTS .....	45
AFFIRMATIVE ACTION .....	45
Set Aside Programs .....	45
<b>V. ADMINISTRATION AND FINANCE .....</b>	<b>47</b>
BOARD MEETINGS .....	49
Procedure .....	49
Executive Session .....	49
Minutes .....	50
Approval of Bills for Payment .....	50
Formal Action by Executive Director .....	51
Notice of Meetings .....	51
RECORDS .....	51
Availability of Public Records .....	52
Destruction of Public Records .....	52
Disclosure of Information Regarding Mentally Ill Persons and Persons in Alcohol or Drug Abuse Programs .....	52
FUNDING .....	53
Mental Health Services and Facilities .....	53
408 Dollars .....	53
Risk Fund .....	53
Alcohol and Drug Addiction Programs .....	54
FISCAL AFFAIRS .....	55
Fiscal Year .....	55

## TABLE OF CONTENTS (Cont'd)

	<u>PAGE</u>
Budget and Expenditure Process .....	55
Budget .....	55
Annual Appropriation Resolution .....	58
Expenditure of Funds .....	59
Borrowing and Levies .....	59
Establishment of Reserve Balance Account and/or Capital Improvement Account .....	60
Deposit and Investment of Public Funds .....	61
Annual Financial Report .....	61
PROPERTY .....	61
Bidding Procedures .....	61
Gifts .....	62
Real Property .....	62
Personal Property .....	62
Inventory .....	62
Insurance .....	62
ELECTRONIC DATA PROCESSING SERVICES .....	62
<b>APPENDICES</b> .....	<b>65</b>
<b>FREQUENTLY ASKED QUESTIONS</b> .....	<b>67</b>
General .....	69
ADAMH, CMH, and ADAS Boards .....	70
Executive Director .....	74
Journal of Proceedings (Minute Book) .....	76
Contracts .....	77
County Budget Commission .....	78
County Auditor .....	80
Levies .....	81
State Auditing Procedures .....	82
<b>GLOSSARY</b> .....	<b>83</b>
<b>ADDITIONAL RESOURCES</b> .....	<b>89</b>
<b>AUDITOR OF STATE</b> .....	<b>93</b>
Organizational Chart.....	95
Administration Division.....	96
Audit Division.....	97
Local Government Services Division .....	99
Legal Division.....	100

## **PREFACE**

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 which may affect Alcohol, Drug Addiction and Mental Health (ADAMH), Community Mental Health (CMH), and Alcohol and Drug Addiction (ADAS) Services Boards (hereinafter referred to as “ADAMH/CMH/ADAS Boards” or “Boards”). For example, it does not address the Medicaid-related responsibilities of the Boards and it 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.

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

Questions may also be submitted to the office of the Auditor of State in regards to 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 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**

O.R.C. 340.011(A), which was enacted pursuant to Senate Bill 156 and House Bill 317, 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 Boards, should be interpreted to accomplish the following:

1. Establish a unified system of treatment for mentally ill persons;
2. Establish a community support system available for every alcohol, drug addiction, and mental health service district;
3. Protect the personal liberty of mentally ill persons 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 severely mentally disabled children, adolescents, and adults;
6. Ensure that services provided meet minimum standards established by the director of mental health or the department of alcohol and drug addiction services;
7. Promote the delivery of high quality and cost-effective alcohol and drug addiction services; and
8. Promote the participation of consumers of mental health services and alcohol and drug 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 to provide alcohol, drug addiction and mental health services. In addition, any county or combination of counties with a population of less than fifty thousand may establish such a district, if authorization is obtained from the Director of the Department of Mental Health and the Director of the Department of Alcohol and Drug Addiction Services. "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 shall be known as a joint-county district. O.R.C. 340.01(B). Generally, no distinction exists between a single and joint county Board concerning the functional powers and duties; however, a distinction does exist in regard to the manner of operation of each particular Board. 1986 O.A.G. 86-048. These distinctions will be elaborated on when the particular subject matter is discussed in this Handbook.

An alcohol, drug addiction and mental health service district is created by formal action of the Board(s) of County Commissioners of the county or counties involved. A resolution setting forth such creation should be entered upon the journal of proceedings of the Board(s) of County Commissioners. For joint-county service districts only, a similar resolution is required for withdrawal from the district. O.R.C. 340.01. The withdrawal procedure requires that the Board of

County Commissioners requesting withdrawal from the joint-county district submit a resolution requesting such, together with a comprehensive plan that is in compliance with rules adopted by the Director of Mental Health under O.R.C. 5119.61 and by the Department of Alcohol and Drug Addiction Services under O.R.C. 3793.05, and that provides for the equitable adjustment and division of all services, assets, property, debts and obligations of the joint-county 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 to the Directors of Mental Health and Alcohol and Drug Addiction Services. Withdrawal requires the consent of both the Director of the Department of Mental Health and the Director of the Department of Alcohol and Drug Addiction Services and cannot take effect earlier than one (1) year after submission of the resolution unless the consent of all participating counties, through the Boards of County Commissioners, is obtained. 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.

#### ESTABLISHMENT OF SEPARATE ALCOHOL AND DRUG ADDICTION SERVICES BOARD AND COMMUNITY MENTAL HEALTH BOARD IN CERTAIN COUNTIES

As part of the Alcohol and Drug Addiction Services Act of 1989, the Board of County Commissioners in alcohol, drug addiction, and mental health service districts comprised of a county with a population of two hundred fifty thousand (250,000) or more as of October 10, 1989, 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 services in that service district. O.R.C. 340.021(A). At that time, seven service districts decided to pursue this option.

Any provision of the Revised Code that refers to a Board of Alcohol, Drug Addiction, and Mental Health services with regard to mental health services also refers to a Community Mental Health Board and any provision that refers to a Board of Alcohol, Drug Addiction, and Mental Health services with regard to alcohol and drug addiction services also refers to an Alcohol and Drug Addiction Services Board. O.R.C. 340.021(A).

#### ACCOUNTABILITY

The Comptroller General of the United States, in *Standards for Audit of Governmental Organizations, Programs, Activities and Functions* (2003) states:

The concept of accountability for public resources is key in our nation's governing processes. Legislators, other government officials, and the public want to know whether: (1) government resources are managed properly and used in compliance with laws and regulations, (2) government programs are achieving their objectives and desired outcomes, and (3) government services are being provided efficiently, economically, and effectively. Managers of these programs are accountable to legislative bodies and the public.

It is firmly established in Ohio, that all public agencies, including ADAMH, CMH, and ADAS 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 an ADAMH/CMH/ADAS 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/CMH/ADAS Boards are specifically accountable to numerous public agencies for the manner of their operation. These include, for example: the Public Employees Retirement System, the 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, four agencies which may be considered in detail: (1) the Department of Mental Health; (2) the Department of Alcohol and Drug Addiction Services; (3) the Board(s) of County Commissioners of the county or counties comprising the district; and (4) the Office of the Auditor of State.

### *Department of Mental Health*

The Ohio Department of Mental Health (ODMH) is responsible for the oversight of community mental health services delivery. The Director of Mental Health is vested with rule making authority pursuant to O.R.C. Chapter 119 and with regulatory responsibility to effectuate the purposes of O.R.C. Chapter 340 and Sections 5119.61 to 5119.63 in relation to the mental health-related functions of ADAMH and CMH Boards.

The authority of the Director includes: requiring each Board and each agency under contract with the Board to promulgate a written policy addressing the rights of its clients; requiring each Board to ensure that each of its contract agencies establishes grievance policies and procedures which are applicable to all recipients of services or applicants for services; responsibility for evaluating services and facilities, including defining minimum certification standards around personnel, training, and service delivery; and the authority to withhold funds when Boards fail to comply with certain statutory requirements.

The Department of Mental Health is also required to establish guidelines for ADAMH and CMH Boards to follow in fulfilling their statutory duty to assess local mental health needs, set priorities, and develop a "Community Mental Health Plan" which must be submitted to the Department pursuant to O.R.C. 340.03. The guidelines also assist the Director in determining when a Plan is complete and the criteria to be used for Plan approval, disapproval, or conditional approval. In addition, the Director must establish criteria by which an ADAMH or CMH Board reviews and evaluates the quality, effectiveness, and efficiency of the mental health services an agency provides pursuant to its Community Mental Health Plan. O.R.C. 5119.61(G). The Department itself may also review and evaluate the quality, effectiveness, and efficiency of the services provided by the Board. O.R.C. 5119.61 (B). A detailed discussion of the Director's role in approving the Plan and the funding that is contingent upon it, are set forth in subsequent sections of this Handbook.

In terms of mental health services, this Handbook is limited primarily to the fiscal and legal requirements imposed upon ADAMH and CMH Boards, as set forth in O.R.C. Chapter 340 and O.R.C. 5119.61 through 5119.63. The legality of a Board's actions, responsibilities, or duties may be affected by the statutes and rules of the Department of Mental Health or other sections of the Ohio Revised Code. Therefore, it is strongly recommended that prior approval of the Department of Mental Health, or a written legal opinion of the Board's legal advisor, be sought in cases of doubt.

### *Department of Alcohol and Drug Addiction Services*

The Ohio Department of Alcohol and Drug Addiction Services (ODADAS) is responsible for the oversight of alcohol and drug addiction services delivery. The Director of Alcohol and Drug Addiction Services is vested with rule making authority, pursuant to O.R.C. Chapter 119, and with regulatory responsibility to effectuate the purposes of O.R.C. Chapter 340 and Sections

3793.05 in relation to the alcohol and drug addiction-related functions of ADAMH and ADAS Boards.

The authority of the Director includes responsibility for evaluating programs, including defining minimum certification standards around personnel, training, and service delivery, and the authority to withhold funds when Boards fail to comply with certain statutory requirements.

ODADAS is also required to establish guidelines for ADAMH and ADAS Boards to follow in fulfilling their statutory duty to develop a plan for providing community alcohol and drug addiction services which must be submitted to the Department pursuant to O.R.C. 340.033 and 3793.05. ODADAS must establish procedures for the submission of new or revised plans, for Departmental review of the plans, and for any corrective action that may be necessary around the plans. A detailed discussion of the Director's role in approving the Plan and the funding that is contingent upon it, are set forth in subsequent sections of this Handbook.

This Handbook generally does not extend to the rules of the Department of Alcohol and Drug Addiction Services. In terms of alcohol and drug addiction services, this Handbook is limited primarily to the fiscal and legal requirements imposed upon ADAMH and ADAS Boards, as set forth in O.R.C. Chapter 340 and Section 3793.05. The legality of a Board's actions, responsibilities, or duties may be affected by the statutes and rules of the Department of Alcohol and Drug Addiction Services or other sections of the Ohio Revised Code. Therefore, it is strongly recommended that prior approval of the Department of Alcohol and Drug Addiction Services, or a written legal opinion by the Board's legal advisor, be sought in cases of doubt.

#### *Board of County Commissioners*

Although the Board(s) of County Commissioners of the counties comprising a single or joint county service district do not possess operational control over the ADAMH, CMH, and/or ADAS Board, 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 Board members, appropriate money for the district, and to seek a tax levy in excess of ten mills.

In addition, ADAMH and CMH Boards are required to submit an annual report of the mental health programs 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, of course, submit the report to the Boards of County Commissioners of each county in the district.

ADAMH and ADAS Boards are required to consult with the Board of County Commissioners when setting priorities and developing plans for the operation of alcohol and drug addiction programs in accordance with O.R.C. 340.033(H).

#### *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. 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 this Handbook.

Audit services are provided by the Audit Division, with a central office in Columbus and regional offices in Athens, Canton, Cincinnati, Cleveland, Columbus, Toledo and Youngstown. Toll-free numbers for the central office in Columbus and for the regional offices are listed in this Handbook. The Auditor of State will perform general audits of all public offices in the state, including joint-county ADAMH Boards and single-county ADAMH, CMH and ADAS Boards as part of their counties' overall audit. Such audits will normally involve a separate audit report from the county. The scope of the audit will be designed to accommodate generally all state and federal audit requirements, including the "single audit" required by the Single Audit Act of 1984.

Audits of the Boards 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 Senior Deputy Auditor in charge of Special Audits, who will evaluate the request in terms of his/her 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 agencies operating under contract with an ADAMH/CMH/ADAS Board. Requests for audits of contract agencies will be treated as requests for special audits.

Audits conducted by the Auditor of State will be performed by Assistant Auditors of State pursuant to Section 117.09, Revised Code. Their compensation and expenses and the expense of preparing the audit report will be charged to the district and billed to it by way of its fiscal officer pursuant to Section 117.13, Revised Code.

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 of State 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 report of an examination is prepared by the auditors. The Executive Director and 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. A breach of confidentiality with regard to 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, a copy will be sent to the ADAMH/CMH/ADAS 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, CMH, or ADAS Board, this may include the Board members, the Executive Director, the county auditor serving as fiscal officer of the Board, and the recipient of the money, as circumstances warrant.

In the event that 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 shall, 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.

**PART II**

**ADAMH/CMH/ADAS  
BOARD GOVERNANCE**



## **ADAMH/CMH/ADAS BOARD GOVERNANCE**

The appointment to and organization of Alcohol, Drug Addiction and Mental Health, Community Mental Health, and Alcohol and Drug Addiction Services Boards are governed by O.R.C. 340.02.

### **Establishment of Board**

For each ADAMH/CMH/ADAS service district, a governing Board consisting of eighteen members shall be appointed. Board members must be residents of the service district and be interested in mental health programs and facilities or in alcohol or drug addiction programs.

### **Appointment of Board Members**

For an ADAMH Board, the Director of Mental Health must appoint four members of the Board, the Director of Alcohol and Drug Addiction Services must appoint four members, and the Board of County Commissioners must appoint ten members.

In a joint-county ADAMH Board district, the County Commissioners of each participating county must appoint the ten county commissioner members 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 shall be appointed from each participating county.

In service districts where there is a separate CMH and a separate ADAS Board, twelve of the members are appointed by the Board of County Commissioners. The remaining six are appointed by the Director of Mental Health for a CMH Board or the Director of Alcohol and Drug Addiction services for an ADAS Board.

The membership of Boards must, as nearly as possible, reflect the composition of the population of the service district as to race and gender.

### **Additional Eligibility Requirements of Board Members**

*ADAMH/CMH Boards:* The Director of Mental Health must ensure that at least one member of the Board is a person who has received or is receiving mental health services paid for by public funds, one member is a parent or other relative of such a person, and one is a mental health professional. "Mental health professional" as defined in O.R.C. 340.02 means a person who is qualified to work with mentally ill persons, pursuant to minimum standards established by the Director of Mental Health under O.R.C. 5119.611.

The Director of Mental Health must also ensure that at least one member of the Board is a psychiatrist. If the appointment of a psychiatrist who is a resident of the Board's service district is not possible, as determined under rules adopted by the Director, a licensed physician may be appointed in place of the psychiatrist. If the appointment of a licensed physician is not possible, the Director may waive the requirement that the psychiatrist or licensed physician be a resident of the service district and appoint a psychiatrist or licensed physician from a contiguous county.

In addition, one member of the Board is permitted to be a voting member of the citizen's advisory council of an institution under the control of the Department of Mental Health that serves a hospital district in which one or more counties in the service district is located.

*ADAMH and ADAS Boards:* The Director of Alcohol and Drug Addiction Services must ensure that at least one member of the Board is a professional in the field of alcohol or drug addiction services and one member is an advocate for persons receiving treatment for alcohol or drug addiction. In addition, at least one must be a person who has received or is receiving services for

alcohol or drug addiction and one must be a parent or other relative of such a person.

### Oath of Office

As public officers within the scope of Article 15, Section 7, Ohio Constitution, Board members are subject to O.R.C. 3.22, which requires that any person appointed to a public office under the laws of this state must take an oath of office before entering upon the discharge of his or her duties. Pursuant to O.R.C. 3.23, each Board member must take an oath to support the Constitution of the United States and the Constitution of the State of Ohio, and to faithfully execute the duties of his/her office.

The oath of office may be administered by a person generally authorized to administer oaths, such as a notary public, judge, or clerk of courts, by any elected official within the subdivision which he/she serves, or by a member of the General Assembly throughout the state. O.R.C. 3.24. Once completed, the oath should be filed with the records of the Board.

### Quorum

A quorum is needed in order to bind the actions of the ADAMH/CMH/ADAS Board. O.R.C. 340.02 does not specify a quorum requirement. See 1978 Ohio Atty. Gen. Op. 047. The statute does set forth qualifying criteria for certain board appointments (i.e., psychiatrist or licensed physician, mental health professional, advocate for alcohol and drug addiction, etc.). A quorum is constituted when the majority of the 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 Board members and employees from engaging in the following dual roles in order to avoid conflicts of interest:

No member or employee of an ADAMH/CMH/ADAS Board shall serve as a member of the Board of any agency with which the Board has entered into a contract for the provision of services or facilities.

No member of an ADAMH/CMH/ADAS Board shall be an employee of any agency 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 a Board and such an agency unless the Board and agency both agree in writing.

No person shall serve as a member of an ADAMH/CMH/ADAS Board whose 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 serves as a member of the Board of any agency with which the Board has entered into a contract for the provision of services or facilities. No person shall service as a member or employee of the Board whose 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 serves as a County Commissioner of a county or counties in the Board district.

### Education Requirement

Each year, each Board member shall attend at least one in-service training session provided or approved by the Department of Mental Health or the Department of Alcohol and Drug Addiction Services. Such training sessions shall not be considered regularly scheduled meetings of the Board.

### Length of Term

Each member shall be appointed for a term of four years, commencing the first day of July, except that one-third of initial appointments to a newly established Board, and to the extent possible to expanded Boards, shall be for terms of two years, one-third for terms of three years and one-third for terms of four years. No member shall serve for more than two consecutive four-year terms. A member may serve for three consecutive terms 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 one year following the end of the second or third term, respectively.

### Vacancy

When a vacancy occurs, appointment for the expired or unexpired term shall be made in the same manner as the original appointment. The appointing authority shall be notified by certified mail of any vacancy and shall fill the vacancy within sixty days following such notice.

### Resignation

As a public officer, a 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 appointment authority and the Directors of Mental Health and/or Drug and Alcohol Services, as appropriate. The Board should formally accept the resignation, and place the letter of resignation with its records.

### Removal

Any member of the Board may be removed from office by the appointing authority for neglect of duty, misconduct or malfeasance in office, and shall be removed by the appointing authority if the member's 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 serves as a County Commissioner of a county or counties in the district or serves as a member or employee of the Board of an agency with which the Board has entered a contract for the provision of services or facilities.

The member shall be informed in writing of the charges and afforded an opportunity for a hearing. Upon the absence of a member within one year from either four Board meetings or from two Board meetings without prior notice, the Board shall notify the appointing authority, which may vacate the appointment and appoint another person to complete the member's term.

Though not specifically stated in O.R.C. Chapter 340, the failure to attend the required in-service training session may be interpreted as neglect of duty and could be grounds for removal by the appointing authority.

### Compensation

Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties, as defined by rules of the

Departments of Mental Health and Alcohol and Drug Addiction Services.

Standing Committee on Alcohol and Drug Addiction Services

Combined ADAMH Boards are each required, pursuant to O.R.C. 340.022, to establish a standing committee on alcohol and drug addiction services.

The standing committee shall consist of the following eight members:

- Four Board members appointed by the Director of Alcohol and Drug Addiction Services who are professionals in the field of alcohol or drug addiction services or advocates for persons receiving treatment for alcohol or drug addiction.
- Two Board members selected by the Board.
- Two residents of the service district who are not members of the Board but are qualified, pursuant to O.R.C. 340.02, to serve as members of the Board. Of these two members, one must be a person who has received or is receiving services for alcohol or drug addiction, and one shall be a parent or other relative of such a person. These two members shall be appointed by the ADAMH Board to four-year terms of office as committee members and may be reappointed to not more than one subsequent term of office.

The standing committee shall meet at least three times a year and shall make recommendations to the Board on the following specific matters:

- (1) The plan to be submitted to the Department of Alcohol and Drug Addiction Services under O.R.C. 340.033 and 3793.05;
- (2) The Board's annual budget for alcohol and drug addiction services;
- (3) Alcohol and drug addiction programs to be funded by the Board; and
- (4) Guidelines for the evaluation of alcohol and drug addiction programs.

The standing committee shall adopt recommendations by a majority vote of its members and shall present recommendations to the Board for consideration at a regularly scheduled meeting of the Board.

## **PART III**

# **ADAMH/CMH/ADAS BOARD POWERS AND DUTIES**



## ADAMH/CMH/ADAS BOARD POWERS AND DUTIES

The powers and duties of ADAMH, CMH, and ADAS Boards are specifically provided for in O.R.C. 340.03 and 340.033.

Although, O.R.C. 340.03 may initially appear to apply only to ADAMH Boards and O.R.C. 340.033 only to ADAS Boards, O.R.C. 340.021 states that a Community Mental Health Board has all the powers, duties, and obligations of a Board of Alcohol, Drug Addiction, and Mental Health Services with regard to mental health services and an Alcohol and Drug Addiction Services Board has all the powers, duties, and obligations of a Board of Alcohol, Drug Addiction, and Mental Health Services with regard to alcohol and drug addiction services.

Therefore, any provision of the Revised Code that refers to a Board of Alcohol, Drug Addiction, and Mental Health Services with regard to mental health services also refers to a Community Mental Health Board and any provision that refers to a Board of Alcohol, Drug Addiction, and Mental Health Services with regard to alcohol and drug addiction services also refers to an Alcohol and Drug Addiction Services Board.

In the following sections, the powers and duties of Boards as they relate to mental health services and facilities will be discussed first, followed by a discussion of the powers and duties of Boards as they relate to alcohol and drug addiction services. The last section talks about the powers and duties of Boards that are common to both mental health *and* alcohol and drug addiction-related services.

### POWERS AND DUTIES OF ADAMH AND CMH BOARDS

The powers and duties of ADAMH and CMH Boards with respect to the provision of mental health services are set forth in O.R.C. 340.03. All requirements under that section are subject to rules issued by the Director of Mental Health.

#### Community Mental Health Planning Agency

ADAMH and CMH Boards serve as the community mental health planning agency for the county or counties under their jurisdiction and are required to:

- (a) Evaluate the need for facilities and community mental health services;
- (b) In cooperation with other local and regional planning and funding bodies and with relevant ethnic organizations, assess the community mental health needs, set priorities, and develop plans for the operation of facilities and community mental health services;
- (c) In accordance with guidelines issued by the Director of Mental Health after consultation with Board representatives, develop and submit to the Department of Mental Health, no later than six months prior to the conclusion of the fiscal year in which the Board's current plan is scheduled to expire, a community mental health plan listing community mental health needs, including the needs of all residents of the district now residing in state mental institutions and severely mentally disabled adults, children, and adolescents; all children subject to a determination made pursuant to O.R.C. 121.38; and all the facilities and community mental health services that are or will be in operation or provided during the period for which the plan will be in operation in the service district to meet such needs.

The plan shall include, but not be limited to: a statement identifying which of the services listed in O.R.C. 340.09 the Board intends to provide or purchase, an explanation of how

the Board intends to make any payments that it may be required to pay under O.R.C. 5119.62, a statement of the inpatient and community-based services the Board proposes that the Department of Mental Health operate, an assessment of the number and types of residential facilities needed, and such other information as the Department requests, and a budget for monies the Board expects to receive.

The Board shall also submit an allocation request for state and federal funds. Within sixty days after the Department's determination that the plan and allocation request are complete, the Department shall approve or disapprove the plan and request, in whole or in part, according to the criteria developed pursuant to O.R.C. 5119.61. The Department's statement of approval or disapproval shall specify the inpatient and the community-based services that the Department will operate for the Board. Eligibility for financial support shall be contingent upon an approved plan or relevant part of a plan.

If the director disapproves all or part of any plan, the Director shall inform the Board of the reasons for the disapproval and of the criteria that must be met before the plan may be approved. The Director shall provide the Board an opportunity to present its case on behalf of the plan. The Director shall give the Board a reasonable time in which to meet the criteria and shall offer the Board technical assistance to help it meet the criteria.

If the approval of a plan remains in dispute thirty days prior to the conclusion of the fiscal year in which the Board's current plan is scheduled to expire, the Board or the Director may request that the dispute be submitted to a mutually agreed upon third-party mediator with the cost to be shared by the Board and the Department. The mediator shall issue to the Board and the Department recommendations for resolution of the dispute. Prior to the conclusion of the fiscal year in which the current plan is scheduled to expire, the Director, taking into consideration the recommendations of the mediator, shall make a final determination and approve or disapprove the plan, in whole or in part.

If a Board determines that it is necessary to amend a plan or an allocation request that has been approved under Division (A)(1)(c) of this section, the Board shall submit a proposed amendment to the Director. The Director may approve or disapprove all or part of the amendment. If the Director does not approve all or part of the amendment within thirty days after it is submitted, the amendment or part of it shall be considered to have been approved.

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

The Board must implement the plan approved by the Department.

- (d) Receive, compile, and transmit to the Department of Mental Health applications for state reimbursement;
- (e) Promote, arrange, and implement working agreements with social agencies, both public and private, and with judicial agencies.

### Review and Evaluation

Pursuant to O.R.C. 340.03(A)(3),(4),and (5), ADAMH and CMH Boards must:

- (a) Cooperate with the Director of Mental Health in visiting and evaluating whether the services of a community mental health agency satisfy the certification standards established by rules adopted under that section;
- (b) In accordance with criteria established under O.R.C. 5119.61(G), review and evaluate the quality, effectiveness and efficiency of services provided through its community mental health plan and submit its findings and recommendations to the Department of Mental Health;
- (c) In accordance with O.R.C. 5119.22, review applications for residential facility licenses and recommend to the Department of Mental Health approval or disapproval of applications.

### Community Support System

Pursuant to O.R.C. 340.03(A)(11), the Board must establish, to the extent resources are available, a community support system which provides for treatment, support and rehabilitation services and opportunities. The essential elements of the system include, but are not limited to, the following components in accordance with O.R.C. 5119.06:

- (a) Outreach to persons in need of mental health services to inform them of available services and benefits mechanisms;
- (b) Assistance for clients to obtain services necessary to meet basic human needs for food, clothing, shelter, medical care, personal safety and income;
- (c) Mental health care, including, but not limited to: outpatient, partial hospitalization and, where appropriate, inpatient care;
- (d) Emergency services and crisis intervention;
- (e) Assistance for clients to obtain vocational services and opportunities for jobs;
- (f) Provision of services designed to develop social, community and personal living skills;
- (g) Access to a wide range of housing and the provision of residential treatment and support;
- (h) Support, assistance, consultation and education for families, friends, consumers of mental health services and others;
- (i) Recognition and encouragement of families, friends and neighborhood networks, especially networks that include racial and ethnic minorities, churches, community organizations and meaningful employment as natural supports for consumers of mental health services;
- (j) Grievance procedures and protection of the rights of consumers of mental health services; and
- (k) Case management, which includes continual individualized assistance and advocacy to ensure that needed services are offered and procured.

## Hospitalization of Mentally Ill Patients

Pursuant to O.R.C. 340.03(A)(12), ADAMH and CMH Boards are required to designate the treatment program, agency or facility for each person involuntarily committed to the Board pursuant to O.R.C. Chapter 5122 and authorize payment for such treatment. 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 listed in O.R.C. 340.09 are available to severely mentally disabled persons residing within its service district.

The Board must also establish the procedure for authorizing payment for services, which may include prior authorization in appropriate circumstances. The Board may provide services directly to a severely mentally disabled person when life or safety is endangered and when no community mental health agency is available to provide the services.

In addition, the Board is required to establish a method for evaluating referrals for involuntary commitment 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 involuntary hospitalization and what alternative treatment is available and appropriate, if any.

### *Commitments to State Psychiatric Hospitals*

Any commitment to the state public mental health system is to an ADAMH or CMH Board or its designated agency, rather than to a state hospital. The only exceptions to this rule are for persons who have been: (1) determined to be incompetent to stand trial but likely to be restored, (2) found not guilty by reason of insanity and (3) committed from the adult correctional system or from the juvenile correctional system.

### *Voluntary Admission*

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 should 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.

### *Involuntary Admission*

Involuntary proceedings begin with a submission of an affidavit to the court. Based upon the affidavit the court may issue a temporary detention order and call for a hearing. O.R.C. 5122.11. Written notice of the hearing must be provided to the Board of the person's county of residence, as well as to any other person entitled to notice under O.R.C. 5122.12.

The court must refer the responsibility of reviewing the allegations in the affidavit to the Board or the agency that the Board designates. The Board or agency must review the allegations to assist in determining whether to hospitalize a person or to provide alternative services. O.R.C. 5122.13.

Pursuant to O.R.C. 5122.141, a patient who is involuntarily placed in a hospital or other place as designated in O.R.C. 5122.10 or 5122.17, or with respect to whom proceedings have been instituted under O.R.C. 5122.11, shall be afforded a hearing to determine whether or not the respondent is a mentally ill person subject to hospitalization by court order. The hearing shall be conducted pursuant to O.R.C. 5122.15 and within five court days from the day on which the respondent is detained or an affidavit is filed, whichever occurs first, in a physical setting not likely to have a harmful effect on the respondent, and may be conducted in a hospital in or out of

the county. Where possible, the initial hearing shall be held before the respondent is taken into custody. O.R.C. 5122.141(F).

A patient or his/her counsel, after obtaining the consent of the respondent, may waive the hearing provided for in this section. In such case, unless the person has been discharged, a mandatory full hearing shall be held by the thirtieth day after the original involuntary detention of the respondent. Failure to conduct the mandatory full hearing within this time limit shall result in the immediate discharge of the respondent. O.R.C. 5122.141(E).

If the court fails to find that the respondent is a mentally ill person subject to hospitalization by court order, it shall order his/her immediate discharge and shall expunge all record of the proceedings during this period. O.R.C. 5122.141(C).

If the court finds that the respondent is a mentally ill person subject to hospitalization by court order, the court may issue an interim order of detention, ordering any health or police officer or sheriff to take into custody and transport such person to a hospital or other place designated in O.R.C. 5122.17, where the respondent may be observed and treated. O.R.C. 5122.141(D).

To ensure that a person is held under an involuntary commitment status only for so long as necessary, the chief clinical officer is required to examine, as frequently as practical, but at least every thirty (30) days, each commitment to determine whether or not the conditions requiring that commitment still exist. O.R.C. 5122.21.

#### *Application for Continued Commitment*

The attorney that the Board designates or the prosecutor must file with the court an application for continued commitment at least ten (10) days before the expiration of the first ninety (90) day commitment period or any subsequent period of continued commitment if the case has not been disposed of by discharge or voluntary admission. The person will be discharged immediately if the above is not done. O.R.C. 5122.15(H).

#### *Rights of Mentally Ill Persons*

Such hospitalized or committed patients must be notified of their rights under the law within twenty-four (24) hours of admission, according to rules established by the legal rights service. O.R.C. 5122.27(G). This includes those enumerated in O.R.C. 5122.29, as well as the civil rights described in O.R.C. 5122.301.

Discharged patients may apply to the Board of their county of residence at any time for the services set forth in O.R.C. 340.09. O.R.C. 5122.231.

#### Housing

Pursuant to O.R.C. 340.04(A)(14), ADAMH and CMH Boards must ensure that apartments or rooms built, subsidized, renovated, rented, owned or leased by the Board or a community mental health agency have been approved as meeting minimum fire safety standards and that persons residing in the rooms or apartments are receiving appropriate and necessary services, including culturally relevant services, from a community mental health agency. This does not apply to residential facilities licensed pursuant to O.R.C. 5119.22.

#### Adult Care Facility Referrals

Pursuant to O.R.C. 340.03(A)(16), ADAMH and CMH Boards must perform the duties under

O.R.C. 3722.18 required by rules adopted under O.R.C. 5119.61 regarding referrals by the Board or mental health agencies under contract with the Board of individuals with mental illness or severe mental disability to adult care facilities and effective arrangements for ongoing mental health services for the individuals. The Board is accountable in the manner specified in the rules for ensuring that the ongoing mental health services are effectively arranged for the individuals.

### Annual Report

ADAMH and CMH Boards must submit to the Director of Mental Health and the County Commissioners of the county or counties served by the Board, and make available to the public, an annual report of the programs under the jurisdiction of the Board, including a fiscal accounting. O.R.C. 340.03(A)(10).

### Direct Provision of Services or Operation of Facilities

Pursuant to O.R.C. 340.03(A)(8)(b), if there is no other qualified private or public agency that is immediately available and willing to operate a service, program or facility, an ADAMH or CMH Board may do so with the prior approval of the Director of Mental Health, as follows:

- (i) In an emergency situation, any Board may operate a facility or provide a community 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, a Board may operate a facility or provide a community mental health service for no longer than one year;
- (iii) In a service district with a population of less than one hundred thousand, a Board may operate a facility or provide a community mental health service for no longer than one year, except that such Board may operate a facility or provide a community mental health service for more than one year with the prior approval of the Director and the prior approval of 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 Mental Health shall not give a Board approval to operate a facility or provide a community mental health service under division (ii) or (iii) of this section unless the Director determines that it is not feasible to have the Department operate the facility or provide the service.

The Director may not give a Board approval to operate a facility or provide a community mental health service under division (iii) of this section 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 mental health agency.

The Director shall not give a Board approval to operate a facility previously operated by a person or other government entity unless the Board has established to the Director's satisfaction that the person or other government entity cannot effectively operate the facility or that the person or other government entity has requested the Board to take over operation of the facility. The Director shall not give a Board approval to provide a community mental health service previously provided by a community mental health agency unless the Board has established to the Director's satisfaction that the agency cannot effectively provide the service or that the agency has requested that the Board take over providing the service.

The Director must review and evaluate a Board's operation of a facility and provision of community mental health service as provided for under this section.

It is important to note that this section is not intended to authorize a Board to administer or direct the daily operation of any facility or community mental health agency other than under the circumstances described above. However, a facility or agency may contract with a Board to receive administrative services or staff direction from the Board under the direction of the governing body of the facility or agency.

#### Supervision of Shelters for Runaways

Pursuant to O.R.C. 5119.64, ADAMH and CMH Boards are responsible for the enforcement of applicable federal requirements and rules of the Board adopted under O.R.C. 5119.66 for the safety and effectiveness of facilities and programs of shelters for runaways located in the county.

Pursuant to O.R.C. 5119.66, each ADAMH and CMH Board must adopt rules governing shelters for runaways, reflecting the intent of Title III of the "Juvenile Justice and Delinquency Prevention Act of 1974," 88 Stat. 1109, 42 U.S.C. 5701, as amended, and regulations adopted thereunder.

The Board must periodically review the rules and consider other relevant standards for crisis childcare, as well as recommendations from individuals and groups in the community when adopting and amending the rules. Existing shelters for runaways must participate in the development of the rules.

O.R.C. 5119.65 provides that no person, organization or agency, other than a children's services agency which has assumed the administering of child welfare, may organize a shelter for runaway minors unless they comply with O.R.C. 5119.64 through 5119.68 and rules adopted under such sections by the Board serving the district in which the shelter is located.

In order to secure compliance, the Board may hold hearings, issue subpoenas, compel testimony and make adjudications. In the event that a shelter for runaways is being operated in violation of O.R.C. 5119.64 through 5119.68, the Board may issue an order for compliance within thirty (30) days after holding the second of two public hearings. O.R.C. 5119.67. Failure to comply with such an order is in violation of Section 5119.65, of the Revised Code, and is punishable by a fine of not less than five dollars (\$5.00) nor more than five hundred dollars (\$500.00).

The Board may require shelters to submit information and data regarding the operations of the shelters and the individuals served. At least annually, the Board must submit a list of shelters in operation in each county to each juvenile court and to the public children services agency. O.R.C. 5119.68.

#### POWERS AND DUTIES OF ADAMH AND ADAS BOARDS

The powers and duties of ADAMH and ADAS Boards with respect to the provision of alcohol and drug addiction services, are set forth in O.R.C. 340.033.

#### Alcohol and Drug Addiction Services Planning Agency

Pursuant to O.R.C. 340.033(A), ADAMH and ADAS Boards serve as the planning agency for alcohol and drug addiction services for the county or counties in their service district and, therefore, must do all of the following in accordance with procedures and guidelines established by the Department of Alcohol and Drug Addiction Services:

- (1) Assess alcohol and drug addiction service needs and evaluate the need for alcohol and drug addiction programs;
- (2) According to the needs determined under division (A)(1) of this Section, set priorities

and develop plans for the operation of alcohol and drug addiction programs in cooperation with other local and regional planning and funding bodies and with relevant ethnic organizations;

- (3) Submit the plan for alcohol and drug addiction services required by O.R.C. 3793.05 to the Department and implement the plan as approved by the Department;
- (4) Provide to the Department information to be included in the information system established by the Department under O.R.C. 3793.04.

#### Priority Setting and Plan Development

Pursuant to O.R.C. 340.033(H), when the Board sets priorities and develops plans for the operation of alcohol and drug addiction programs, it must consult with the County Commissioners of the counties in the Board's service district regarding the services to be provided. In so doing, the Board is required to give priority status to services provided to the parents, guardians or custodians of children assessed to be at imminent risk of being abused or neglected because of a drug or alcohol addiction of the parent, guardian or custodian of the child. Such services are to be given priority over all others *except* for services provided to addicted pregnant women under programs as required pursuant to O.R.C. 3793.15. The plans shall identify funds the Board and public children services agencies in the Board's service district have available to fund jointly the services described in O.R.C. 340.15.

#### Review, Evaluation and Auditing

ADAMH and ADAS Boards are required to review and evaluate alcohol and drug addiction programs in their district and conduct program audits. O.R.C. 340.033(A)(6).

#### Annual Report

ADAMH and ADAS Boards must each prepare and submit an annual report of the alcohol and drug addiction programs in their district to the Department of Alcohol and Drug Addiction Services. O.R.C. 340.033(A)(7).

#### Applications for Funding

ADAMH and ADAS Boards are required to receive, compile and transmit the applications for funding to ODADAS. O.R.C. 340.033(A)(8).

#### Working Agreements with Other Entities

ADAMH and ADAS Boards must promote, arrange and implement working agreements with public and private social agencies and with judicial agencies. O.R.C. 340.033(A)(9).

#### Direct Operation of Programs

Pursuant to O.R.C. 340.033(F)(1), an ADAMH or ADAS Board may operate an alcohol or drug addiction program, with the prior approval of ODADAS, if there is no qualified program that is immediately available, willing to provide services, and able to obtain certification under O.R.C. Chapter 3793, as follows:

- (a) In an emergency situation, any Board may operate a program in order to provide essential services for the duration of the emergency;

- (b) In a service district with a population of at least one hundred thousand but less than five hundred thousand, a Board may operate a program for no longer than one year;
- (c) In a service district with a population of less than one hundred thousand, a Board may operate a program for no longer than one year, except that such a Board may operate a program for longer than one year with the prior approval of the Department and the prior approval of the Board of County Commissioners, or of a majority of the Boards of County Commissioners if the district is a joint-county district.

The Department may not give a Board its approval to operate a program under division (c) of this section unless it determines that the Board's program will provide greater administrative efficiency and more or better services than would be available if the Board contracted with a program for provision of the services. O.R.C. 340.033(F)(2).

The Department may not give a Board its approval to operate a program previously operated by a public or private entity unless the Board has established to the Department's satisfaction that the entity cannot effectively operate the program, or that the entity has requested the Board to take over operation of the program. O.R.C. 340.033(F)(3).

The Department must review and evaluate the operation of each program operated by a Board under this division. O.R.C. 340.033(F)(4).

Is it important to note that this section is not intended to authorize a Board to administer or direct the daily operation of any program other than a program operated by the Board under the circumstances described above. However, a program may contract with a Board to receive administrative services or staff direction from the Board under the direction of the governing body of the program. O.R.C. 340.033(F)(5).

#### POWERS AND DUTIES OF ADAMH, CMH AND ADAS BOARDS

The following powers and duties are found in both O.R.C. 340.03 and 340.033 and are therefore applicable to all ADAMH, CMH and ADAS Boards.

##### Investigate Abuse or Neglect Complaints

All 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 mental health agency, a residential facility licensed under O.R.C. 5119.22, or an alcohol or drug addiction program. O.R.C. 340.03(A)(2), O.R.C. 340.033(A)(10). 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 shall provide information about such investigations to ODMH and/or ODADAS. O.R.C. 340.033(G), O.R.C. 340.03(A)(2).

##### Audit

Boards must audit at least annually, in accordance with rules adopted by the Auditor of State pursuant to O.R.C. 117.20, all programs and services provided under contract with the Board. In so doing, the Board may contract for or employ the services of private auditors. A copy of the fiscal audit report must be provided to the Directors of Mental Health and Alcohol and Drug Addiction Services, the Auditor of State and the county auditor of each county in the Board's district. O.R.C. 340.03(A)(6), O.R.C. 340.033(B).

## Financial Support

Boards may recruit and promote local financial support for mental health and alcohol and drug addiction programs from private and public sources. O.R.C. 340.033(A)(12), O.R.C. 340.03(A)(7).

## Contracts – O.R.C. 340.03 and 340.033 Considerations

Boards must enter into contracts with public and private agencies for the provision of mental health and alcohol and drug addiction services, as well as for the operation of mental-health related facilities. In contracting with those agencies, a Board must consider the cost effectiveness of services and the quality and continuity of care provided by that agency, and may review cost elements, including salary costs, of the services to be provided in order to do so. Ohio's competitive bidding requirements do not apply to such contracts.

In the case of a contract with a community mental health facility, as defined in O.R.C. 5111.023(A), to provide services listed in division (B) of that section, the contract shall provide for the facility to be paid in accordance with the contract entered into between the Departments of Job and Family Services and Mental Health under O.R.C. 5111.91, and any rules adopted under O.R.C. 5119.61(A).

A utilization review process is to be established as part of the contract for services. The Board may establish this process in the way it considers to be the most effective and efficient in meeting local needs. O.R.C. 340.03(A)(8)(a).

If either the Board or the agency with which it contracts for the provision of services, programs or facilities proposes not to renew the contract or proposes substantial changes in contract terms, the other party shall 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 this one hundred twenty-day period, both parties shall 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 the Department of Mental Health and/or the Department of Alcohol and Drug Addiction Services, as appropriate, 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 agency. The third party shall issue to the Board, the agency 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 Directors shall adopt rules establishing the procedures to follow in the dispute resolution process.

## Contracts – Other Considerations

The principal authority of ADAMH, CMH and ADAS Boards consists of their power, pursuant to O.R.C. 340.03(A)(8) and 340.033(A)(5), to contract for the provision of mental health and drug and alcohol addiction services. 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.

## *General Form and Procedure*

Every contract entered into by the 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 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 district for his/her certification that the amount required for expenditure under the contract has been lawfully appropriated for that purpose and is in the treasury or in the process of collection, free from any previous encumbrance. In the case of a continuous 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, must be certified. This certification need only be signed by the county auditor. Any contract entered into without the certification required is void.

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 become due on the contract. A certificate of the fiscal officer as to the availability of funds for the amount of this estimate, or so much of this estimate as may be due during the current fiscal year, will satisfy the O.R.C. 5705.41(D), certification requirements.

For more on certifications, please refer to page 59 of this manual, under “Expenditure of Funds.”

### *Adoption and Execution*

After certification by the fiscal officer, the contract must be formally adopted by resolution of the 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 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. It is suggested that the Board retain the original copies of all contracts in a central location (such as a file binder) where they are easily accessible when needed.

### *Terms*

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 mental health facilities and services.

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 agencies include a provision that the title to all tangible personal property identifiable as purchased with public funds be in the name of the community mental health 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 agency funds, the contract must provide for a settlement with the agency of the proportionate amount of the market value of the property. Property purchased with agency 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 agencies; however, if the relationship between the Board and the contract agency is terminated, such property must be returned to the Board or purchased by the agency for the market value of the property.

It will be necessary for both the Board and the contract agencies to maintain a detailed inventory of all such property, as specified in the inventory records section of the Handbook.

*Fringe Benefits* – O.R.C. 340.03(A)(8)(a) and 340.033(C) provide that Boards may consider salary costs, including costs of fringe benefits when contracting with a contract agency. Implicit in the Board's authority to contract with contracting agencies is the authority to set specific terms. The provision of fringe benefits would be an appropriate term to be included in a contract. 1977 O.A.G. 77-048.

Additionally, pursuant to O.R.C. 340.11, the Board is authorized to act as principal for contract agencies in the procurement of insurance coverage for contract agency employees. The advantage is clear, due to the savings available in purchasing for a larger group. Any such joint purchase should be dealt with in the contract. The contract should specify the insurance coverage, the basis for allocation and the cost for the Board and contract agencies involved. Provisions should also be made for the payment of each agency's share, or a charge against their funds due from the Board.

*Civil Rights Provisions* – O.R.C. 340.12 states that no Board or agency, corporation or association under contract with a Board, may discriminate in the provision of services under its authority, in employment, or contract on the basis of race, color, sex, creed, disability, national origin, or the inability to pay. In addition, pursuant to O.R.C. 5119.61(D), the Director of Mental Health must withhold state and federal funds from an ADAMH or CMH Board that denies service based on race, color, sex, creed, disability, national origin, or the inability to pay. Also, the federal block grant monies that ADAMH and ADAS Boards receive through ODADAS are subject to compliance with the Civil Rights Act of 1964. Therefore, it is recommended that each contract include a provision prohibiting discrimination, with the ramification of such discrimination being cancellation of the contract.

*Clients' Rights* – Since both ODMH and ODADAS require that all agencies, programs and facilities under contract with the Boards have a written policy addressing the rights of clients and the agency's grievance procedures, it is recommended that each contract include a provision requiring that the agency develop such policies.

*Method of Payment* - The contract may provide for payment on a grant, reimbursement, or per unit basis, or combination thereof. O.R.C. 340.03(A)(9) and 340.033(A)(13) mandate that each method of payment for contract services provided by contract agencies be made in accordance with guidelines issued by the Departments of Mental Health and Alcohol and Drug Addiction Services. Therefore, before initiating a payment method for contract services the Board must verify that they are in compliance with Department guidelines.

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 agency, members of the Board, and other officials who authorized or participated in authorizing payment, as circumstances warrant.

*Consultants* – O.R.C. 340.04(E) authorizes the Executive Director of the Board to employ and remove consultants as deemed necessary. The employment or removal of consultants by the Executive Director is subject to approval by the Board. It is recommended that the contract entered into between the parties state that the consultant is serving as an independent contractor.

### Fee Schedules

The Board must approve fee schedules and related charges or adopt a unit cost schedule or other methods of payment for contract services provided by community mental health agencies or alcohol and drug addiction programs, in accordance with guidelines issued by ODMH and/or ODADAS. O.R.C. 340.03(A)(9), 340.033(A)(13).

### Governing Documentation and Performance of Necessary Duties

The Board shall establish such 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. O.R.C. 340.03(B).

### Consumer Involvement

Boards are required to establish a mechanism for involvement of consumer recommendation and advice on matters pertaining to mental health and/or alcohol and drug addiction services in the Board district. O.R.C. 340.03(A)(15), 340.033(A)(11).

### Gifts, Grants and Bequests

An ADAMH/CMH/ADAS Board may receive by gift, grant, devise or bequest of any moneys, lands or property for the benefit of the purposes for which the Board is established, and may hold and apply it according to the terms of the gift, grant or bequest. All moneys received, including accrued interest, by gift, grant or bequest shall be deposited in the treasury of the county, the treasurer of which is the custodian of the ADAMH/CMH/ADAS district to the credit of the Board, and such monies shall be available for use by the Board for purposes stated by the donor or grantor. O.R.C. 340.03(C).

### Liability

Board members and employees of ADAMH/CMH/ADAS Boards are not 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 any section of the Revised Code, unless such action or inaction constitutes willful or wanton misconduct. See the *Liability* heading in the Officers and Employees section for more information. O.R.C. 340.03(D).

## Meetings

Pursuant to O.R.C. 340.03(E), meetings held by any committee established by an ADAMH/CMH/ADAS Board are to be considered meetings of a public body subject to O.R.C. 121.22 (B)(1) and are, therefore, subject to the Open Meetings Act. See the *Board Meeting* heading in the *Administration and Finance* section for more information on the Open Meetings Act.

**PART IV**

**OFFICERS AND EMPLOYEES**



## OFFICERS AND EMPLOYEES

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 subdivision.

ADAMHS/CMH/ADAS 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 ADAMHS/CMH/ADAS 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. 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.

## COMPENSATION

### Authority

The authority to determine the compensation of employees of an ADAMH/CMH/ADAS Board is vested in the Executive Director of the Board pursuant to O.R.C. 340.04(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;

While the statutes provide for the authority of the Board to compensate its employees, it does not specifically set forth the manner in which employees of the Board are to be paid. This lack of specificity has raised various issues regarding the payment of compensation and will be discussed below.

### 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 Pay

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 J 93811,52 Stat. 1060, 29 U.S.C. 207, 213, as amended. Of particular importance to Boards is the exemption of executive, administrative and professional employees from coverage. Additional information as to 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.

### Fringe Benefits

"Compensation" as that term is used in O.R.C. 340.04(E), with respect to 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 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 the Board and the Executive Director to grant sick leave to Board employees is limited by O.R.C. 124.38, which prescribes the amount of sick leave which 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 must 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

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 him 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 evidence shall 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.

### 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 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 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. Board members may be reimbursed for mileage for legitimate Board functions both within and beyond the district. Reimbursement shall 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 Board members and employees, as long as expenses are otherwise reimbursable. A Board may, of course, 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 Board members shall be reimbursed for actual and necessary expenses, but *only* as defined by the rules of the Departments of Mental Health and Department of Alcohol and Drug Addiction Services. Therefore, where any doubt exists as to the propriety of a particular item of expense, the Departments should first be consulted.

One final note bears mentioning: There is *no* authority for the reimbursement of expenses

incurred by a spouse, relative or any other traveling companion of a 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.

### PUBLIC EMPLOYEES RETIREMENT SYSTEM

Employees of ADAMH, CMH, and ADAS Boards are "public employees" as defined in O.R.C. 145.01(A). 1967 O.A.G. 67-104. As such, membership in the 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 Firemen's Disability and Pension Fund or the State Highway Patrol Retirement System are excluded from membership in PERS. 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 PERS. O.R.C. 145.03.

#### Funding and Service

PERS is funded by employee and employer contributions 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 PERS in general may be obtained from the Public Employees Retirement System, whose address is listed at the front of this Handbook.

## Contract Agencies

Employees of agencies contracting with a Board pursuant to O.R.C. 340.03(A)(8)(a) and/or O.R.C. 340.033(A)(5) to provide mental health or alcohol and drug addiction services and facilities, may become members of PERS only if they are "public employees" as defined in O.R.C. 145.01 (A). In most instances, this will not be the case, as the contracting agencies are private organizations. Attention is directed, however, to a portion of O.R.C. 145.01 (A), which states that:

..."Public employee" also means a person who is a member of the retirement system and who continues to perform the same or similar duties under the direction of a contractor who has contracted to take over what before the date of the contract was a publicly operated function. The governmental unit with which such contract has been made shall be deemed the employer for the purpose of administering Chapter 145 of the Ohio Revised Code...

Thus, where mental health or alcohol and drug addiction services have been provided by a facility operated directly by a Board pursuant to O.R.C. 340.03(A)(8)(b) or O.R.C. 340.033(F)(1), and the service is subsequently taken over by a contract agency, with employees of the Board carried over to service the contract agency and perform the same or similar duties, such employees retain their PERS membership, and the Board is responsible for administering O.R.C. Chapter 145, as it applies to such employees.

It is important to note that this provision applies only where such a transfer of responsibility from the Board to a contract agency occurs, and affects only those employees working for the Board who are transferred at the time the contract agency assumes responsibility for operating the facility. Any subsequent employees hired by the contract agency are not eligible for PERS membership under this provision, as they are not "public employees". 1972 O.A.G. 72-055.

Similarly, employees of a Board who transfer their employment to a contract agency do not necessarily retain their PERS membership. Membership is retained only if a contract agency is taking over activities of the Board, including those of the individual in question. Thus, a Board may not routinely hire individuals as Board employees to qualify them for PERS, with the intention of immediately thereafter transferring them to a contract agency, while retaining their PERS membership. The membership will, in fact, be retained only if the facts of the particular case fall within the reasoning of 1972 O.A.G. 72-055. In case of doubt, questions as to eligibility should be submitted to the Public Employees Retirement System for resolution.

## 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, CMH, and ADAS 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, 32<sup>nd</sup> Floor, Columbus, Ohio 43215-3414.

## Collective Bargaining

Although ADAMH, CMH, and ADAS 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 the ADAMH Board to be included within the Collective Bargaining Act.

## CONFLICT 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 his interest in the contract, so long as he 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 officials 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, 135<sup>th</sup> General Assembly) to protect the integrity of government. It applies to public officials and employees, and is, therefore, applicable to all

ADAMH/CMH/ADAS 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 and employees 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 requires that within fifteen days of any public official or employee, including 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.

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 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 of the positions a classified employment within the terms of O.R.C. 124.57?
- (2) Do the empowering statutes of either position limit the outside employment permissible?
- (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? or
- (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 Board members and employees, the provisions of O.R.C. 340.02 should be considered. According to that section, the following restrictions and limitations apply:

- (1) No Board member or employee may serve as a member of the Board of any agency with which the Board has entered into a contract for services or facilities;
- (2) No Board member may be an employee of any agency with which the Board has entered into a contract for services or facilities, and no person may be an employee of a Board and an agency unless both the Board and the agency agree in writing.
- (3) No person may serve as a Board member when a relative of such person serves as a member of the Board of any agency with which the Board has entered into a contract for

services or facilities; and

- (4) No person shall serve as a Board member when a relative of such person serves as a County Commissioner of a county or counties under the jurisdiction of that Board.

For the purposes of the above limitations the term "relative" includes all of the following: spouse, child, parent, brother, sister, grandchild, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law.

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 an ADAMH, CMH, or ADAS Board who was also a Board member of a private contract agency, 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.

Some illustrative examples are as follows:

1. A person may serve concurrently as a member of a Board and as a member of a city board of education; 1979 O.A.G 79-049;
2. Pursuant to O.R.C. 340.02, a school principal may not serve on an ADAMH, CMH, or ADAS Board when his employing school has contracted with the Board. 1981 O.A.G. 81-101.

### BONDING

There is no statutory requirement that 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 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 insure 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, 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, Section 340.033, 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 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 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 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, pursuant to O.R.C. 340.03(A)(12), ADAMH and CMH Boards are directly involved in the involuntary commitment process of mentally ill persons. Under current law, persons acting in good faith either upon actual knowledge or information thought to be reliable, who participate in hospitalization, discharge or judicial proceedings are immune from liability. O.R.C. 5122.34. Immunity includes both the Boards and their contract agencies.

Furthermore, this immunity provision is extended to include activities which involve the determination and appropriate placement of *mentally ill* persons. 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 protect Board members and employees from such liability, Boards are also authorized to procure with public funds insurance coverage to insure Board members and employees against liability arising from the performance of their official duties. O.R.C. 340.11. Such insurance coverage may also be purchased for employees of agencies under contract with the Board.

As stated earlier, a Board may be indemnified for conduct that does not constitute willful or wanton misconduct. In addition, if insurance is unavailable or the amount the Board has procured is insufficient to cover the claim, the Board may indemnify the member or employee against all expenses. Indemnification of such expenses includes attorney fees that the Board member or employee reasonably incurs as a result of a proceeding, or expenses incurred in defense of a claim, issue, or matter raised in connection with the defense of the member's or employee's action or inaction, to the extent the member or employee is successful on the merits or otherwise.

In accordance with O.R.C. 340.11 (B), the Board is permitted to use a percentage of its budget to purchase liability insurance. The percentage amount of the Board's total budget which may be

expended for liability insurance varies from Board to Board and, for CMH and ADAMH Boards, is contingent upon the Department of Mental Health's approval of the expenditure.

Finally, it should be noted both a Board and its officers 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 an ADAMH, CMH, or ADAS Board is the Executive Director. O.R.C. 340.032 states that a 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 Board to employ the Executive Director. O.R.C. 340.032 requires only that the Executive Director be "a qualified mental health or alcohol or drug addiction services professional with experience in administration or a professional administrator with experience in mental health or alcohol or drug addiction services." Beyond this general description of qualifications, no other statutory requirements exist. Therefore, the Board must exercise its discretion in selecting a person that is properly qualified for the position.

#### Compensation

The compensation of the Executive Director is fixed by the Board pursuant to O.R.C. 340.032. 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 Officers 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. 340.04. They include:

- (1) Serving as an executive officer of the Board and executing contracts on its behalf (subject to the prior approval of the Board for each contract);
- (2) Supervising the services and facilities provided 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 Mental Health and the Department of Alcohol and Drug Addiction Services;
- (3) Providing consultation to contract agencies, associations, and individuals providing services supported by the Board;
- (4) Employing and removing employees and consultants and fixing their compensation and reimbursement within the limits set by the salary schedule and budget of the Board (Note:

employment and removal of unclassified employees and consultants is subject to prior approval by the Board);

- (5) Recommending to the Board those changes necessary to increase the effectiveness of mental health services and alcohol and drug addiction services provided in the district;
- (6) Encouraging the development and expansion of mental health programs, with emphasis on continuity of care;
- (7) Preparing for Board approval an annual report of the programs under the Board's jurisdiction, including a fiscal accounting of all services;
- (8) Conducting studies, as necessary and practicable, for the promotion of mental health and the prevention of mental illness, emotional disorders, and addiction to alcohol and drugs; 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.

In addition to the above listed duties, the Board may, in its discretion, prescribe additional duties, to be carried out by the Executive Director. O.R.C. 340.032.

### Removal

As a general rule, the Executive Director serves at the pleasure of the 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 Board. The proper procedure for removal is contained in O.R.C. 340.032. An Executive Director may be removed only for cause, and only then by a majority vote of the full membership of the 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 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.

## LEGAL COUNSEL

### Single-County Boards

Pursuant to O.R.C. 309.09, the county prosecutor is the general legal counsel for single-county Boards. The Board "may require written opinions or instructions from him 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 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 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 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, CMH and ADAS 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 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 PERS 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 PERS system is a matter for determination by the 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. 340.04 (E), the Executive Director of a Board may employ and remove such consultants as may be necessary for the work of the Board. He/she 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 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 Board approving such contracts should indicate the basis of the decision to contract for such services.

### AFFIRMATIVE ACTION

Each Board and each community mental health agency and alcohol and drug addiction program under contract with the Board, must have a written affirmative action program that includes goals for the employment and effective utilization of, including contracts with, members of economically disadvantaged groups. Each Board, agency and program must file a description of the affirmative action program and a progress report on its implementation with the Department of Mental Health and/or the Department of Alcohol and Drug Addiction Services.

Additionally, all Boards and agencies, corporations, or associations under contract with a Board are prohibited from discriminating in the provision of services under its authority, in employment, or contract on the basis of race, color, sex, creed, disability, national origin, or the inability to pay. O.R.C. 340.12.

### Set Aside Programs

Pursuant to O.R.C. 340.13, Boards must set aside a portion of the contracts for bidding exclusively by minority business enterprises. To be classified as a minority business enterprise an application should first be made to the Equal Employment Opportunity Coordinator in the Department of Administrative Services in order to obtain certification as a minority business enterprise. The coordinator must approve the application of any minority business enterprise that complies with the rules adopted under O.R.C. 122.71.

Minority business enterprises include those which are owned and controlled by United States citizens, Ohio residents, and who are Black, American Indian, Hispanic or Oriental. Boards must set aside contracts totaling approximately fifteen percent (15%) of the value of all Board contracts for purchases of equipment, materials, supplies, or services and contracts totaling approximately five percent (5%) of the value of any contracts the Board awards for construction. Contracts entered into for mental health services and facilities would be excluded from the set aside requirements.

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.

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

**PART V**

**ADMINISTRATION AND FINANCE**



## ADMINISTRATION AND FINANCE

### BOARD MEETINGS

#### Procedure

An ADAMH, CMH or ADAS 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 Boards, the 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.

#### Executive Session

Meetings of the Board, as a public agency, are required to be open to the public, unless the subject matter under consideration permits an executive session, as provided in O.R.C. 121.22 (G). Permissible subjects for an executive session include:

- (1) Personnel matters (unless the employee or official requests a public hearing, 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 involve the Board;
- (4) Collective bargaining;
- (5) Matters required by federal law or state statutes to be kept confidential; or
- (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 matter as exempted from the "open meeting" requirement would be improper. Before the Board may hold an executive session, the motion and vote shall state which one or more of the approved matters will be considered during the executive session. Additionally, a majority of a quorum of the Board must be determined by roll call vote to hold such a session. O.R.C. 121.22 (G).

If the 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 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

Boards must keep minutes of all meetings of the Board, which are to be promptly prepared, filed, and maintained, and shall 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 Board. Incompleteness or obscurity of the record inevitably creates doubt as to the quality of the Board's work or its willingness to submit its actions to scrutiny.

All formal actions of the Board, particularly all actions involving the expenditures 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.

#### (a) 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 Board so desires.

Approval of payment must be taken at a regular or special meeting of the 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 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 Board determines that an expenditure is within the Board's appropriation and the county auditor refuses 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.

(b) Formal Action by Executive Director

Although not required by statute, it is recommended that all formal actions by the Executive Director, particularly significant personnel actions, be reported to the 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.

Notice of Meetings

The Board must, pursuant to O.R.C. 121.22, 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.

RECORDS

A number of other records are required to be kept by the Board in addition to minutes of meetings. Virtually every public entity to which the Board is 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 destruction, disclosure, and confidentiality of public records.

O.R.C. 149.43(A)(1) defines "public records" as any records kept by any public office except the following:

1. Medical records other than births, deaths and the fact of admission and discharge from the hospital;
2. Adoption records;
3. Probation records;
4. Parole proceedings;
5. Trial preparation records;
6. Confidential law enforcement investigation records; and
7. Records for which the release is otherwise prohibited by state or federal law.

### Availability of Public Records

O.R.C. 149.43 provides that all public records shall be promptly prepared and made available for inspection to 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.

O.R.C Chapter 1347 contains restrictions on the maintenance of personal information systems. The Board must also take steps, as specified in the statute, to maintain the security and accurateness of the system. 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. 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.*

It should be noted, however, 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.)

### Destruction of Public Records

Destruction of the public records of a single-county ADAMH, CMH, or ADAS Board is subject to the rules and regulations of the county records commission established pursuant to O.R.C. 149.38. This commission consists of the president of the Board of County Commissioners, the prosecuting attorney, auditor, the recorder, and the clerk of the court of common pleas, O.R.C. 149.38(A). As the records of a joint-county Board are maintained, in part, at the offices of the county auditor and county treasurer which serve the Board, each should adhere to the disposal system established by that county's records commission.

If the county records commission has approved records for destruction, it is necessary to obtain approval of the Auditor of State. If the Auditor of State disapproves the destruction, in whole or in part, the Auditor of State will inform the commission within sixty (60) days, and the records may not be destroyed. In addition, before public records are destroyed, the commission shall notify the Ohio Historical Society and give sixty (60) days to select for custody records of continuing historical value. O.R.C. 149.38(C)

### Disclosure of Information Regarding Mentally Ill Persons and Persons in Alcohol or Drug Abuse Programs

ADAMH, CMH, and ADAS Boards must be familiar with the federal laws protecting the confidentiality of information pertaining to individuals receiving mental health and drug and alcohol 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.

Boards are also required to comply with the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (45 CFR Parts 160 and Subparts A and E of 164) which requires the implementation of national standards to protect the privacy of personal health information.

## FUNDING

### Mental Health Services and Facilities

Much of the funding for mental health services and facilities comes from discretionary funding that Ohio Department of Mental Health receives as part of the state budget process that is a combination of state and federal funds. Other funding streams include those driven by statutory provisions, revenues from levies, and grants received from both public and private sources.

The following constitute an overview of some of the mental health services funding streams that are driven by statutory provisions:

#### *408 Dollars*

The funding allocation formula for these dollars establishes the amount of state general revenue funds appropriated to the Department of Mental Health for funding state mental hospitals that the Department must allocate and distribute to local Boards. The amounts are determined under a formula devised by the Department in its discretion according to percentages defined in statute, for the purposes of providing services to severely mentally disabled persons. *Clermont Cty. ADAMH Bd. V. Hogan (Ohio 1997) 79 Ohio St.3d 358, 681 N.E.2d 1322, reconsideration denied 80 Ohio St.3d 1415, 684 N.E.2d 707. O.R.C. 5119.62.*

The funds are distributed in accordance with the requirements applicable to each type of fund, with state funds normally provided on a regular basis and not by reimbursement. Each type of funding is allocated and distributed in accordance with the applicable state and federal laws and regulations and the approved plan.

Each Board annually, no later than April 1 of each year, must elect whether or not to accept distribution of any part of its allocation. If the Board elects to accept distribution of its allocation, the amount allocated may be used for the purpose of local management of mental health services, or if the Board chooses, a portion of the entire amount allocated may be used for hospital services.

If a Board elects to accept such a distribution then the Board agrees to make payments into a Risk Fund. Should the Board elect not to receive a distribution, it must still plan with the Department for utilization of its allocation, but the Department will retain all of that allocation for state-operated hospital or non-hospital services.

#### *Risk Fund*

O.R.C. 5119.62 (E) (1) provides for the establishment of a risk fund. This fund will receive sustaining payments from ADAMH/CMH Boards which elect to accept appropriations from the general revenue fund for the purpose of local management of mental health services pursuant to a formula developed by the Director of Mental Health in consultation with relevant constituencies. The purpose of the fund is to provide partial assistance to ADAMH/CMH Boards whose costs of utilization of state hospitals by residents exceed the amount initially allocated from general revenue funds for the purpose of local management of mental health services, as well as to those Boards that are experiencing financial hardship. All investment earnings of the fund must be credited to the fund. It is the responsibility of the Director of the Department of Mental Health in consultation with representatives of ADAMH and CMH Boards to develop guidelines for the use

of monies in the Risk Fund.

Before April 1 of each year, the Department of Mental Health must specify what percentage of the money allocated to the Board is to be transmitted to the Director of the Department of Mental Health for deposit in the risk fund for the following fiscal year. Before August 1 of each year, the Board must transmit to the Director for deposit into the risk fund, the amount obtained by multiplying that percentage by the amount allocated for distribution to the Board.

Whenever the cost of utilization of state hospitals by residents in a Board district exceeds the amount allocated to the district, responsibility for payment of the excess costs shall be borne by both the Board and the risk fund as follows:

- (1) The Board and the risk fund each are responsible for payment of one-half (1/2) of any costs that exceed one hundred percent (100%) of the amount allocated under the formula but do not exceed one hundred five percent (105%) of that amount;
- (2) The Board is responsible for payment of one-fourth (1/4) and the risk fund responsible for three-fourths of any costs that exceed one hundred five percent (105%) of the amount allocated under the formula but do not exceed one hundred ten percent (110%) of that amount;
- (3) The risk fund is responsible for payment of any costs that exceed one hundred ten percent (110%) of the amount allocated under the formula but do not exceed one hundred fifteen percent (115%) of the amount;
- (4) The Board is responsible for payment of all costs that exceed one hundred fifteen percent (115%) of the amount allocated under the formula.

Below are two examples of how the Risk Fund would be used with varying amounts of over-utilization:

Example A

Board Allocation	\$1,000,000
Cost of State Hospital Services Used	1,100,000
Board Pays	37,500
Risk Fund Pays	62,500

Example A shows 110% over utilization. Board pays 50% of \$50,000 plus 25% of \$50,000.

Example B

Board Allocation	\$1,000,000
Cost of State Hospital Services Used	1,200,000
Board Pays	87,500
Risk Fund Pays	112,500

Example B shows 120% over utilization. Board pays 50% of \$50,000 plus 25% of \$50,000 plus 0% of \$50,000 plus 100% of \$50,000.

Alcohol and Drug Addiction Programs

A portion of funding for alcohol and drug programs comes from discretionary funding that ODADAS receives as part of the state budget process that is a combination of state and federal

funds. Other local funding streams include revenues from levies and grants received from both public and private sources.

ODADAS allocates the state and federal funding received through the state budget process to Boards based on its determination of the service and/or special population needs. ODADAS requires that 20 percent of Boards' per capita funding be dedicated to prevention services. County level funding is determined by the population size of the counties and by ODADAS' determination of the relative acuteness of service needs in the counties.

Other ODADAS funding decisions are driven by specific maintenance of efforts requirements and priority services to population groups such as addicted pregnant women, individuals at or slightly above the federal poverty level and school-aged children.

## FISCAL AFFAIRS

### Fiscal Year

Other than for school districts, the fiscal year of all political subdivisions of the state, including ADAMH, CMH, and ADAS Boards, commences at the opening of the first day of January and ends at the closing of the following thirty-first of December. O.R.C. 9.34. However, subdivisions may use a different fiscal year or other fiscal period for one or more of its funds, including when that fiscal year or period is the same as the fiscal year of an entity providing money for the fund or the fiscal period of a capital project. Use of a different fiscal year or period shall be consistent with generally accepted accounting principles and shall be approved by the fiscal officer of the subdivision and by the Auditor of State. If a subdivision uses a different fiscal year or period, the Auditor of State may require the subdivision to continue to maintain financial reports or statements on the basis of the state fiscal year.

As with all laws applicable to the levying of taxes, the appropriation or expenditures of revenues or the making of financial reports apply to this fiscal year, it is essential that the Board and its officers and employees keep this fiscal year in mind 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. This area is particularly confusing in that reports to the Department of Mental Health and the Department of Alcohol and Drug Addiction Services must be prepared on the basis of the state fiscal year, running from the first of July to the following June 30<sup>th</sup>, and those reports often reflect federal funding running from the first of October to the following September 30<sup>th</sup>.

### Budget and Expenditure Process

As public agencies operating through the fiscal system maintained by the county auditor and county treasurer, ADAMH, CMH, and ADAS 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 into 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 personal 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 Board, or requests of a joint-county Board for appropriations from a county, the proposed funds for ADAMH/CMH/ADAS 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.

#### *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/CMH/ADAS 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.

### Borrowing and Levies

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.

A Joint-county Board *is* considered to be a "subdivision" and a "taxing authority" pursuant to O.R.C. Chapter 5705, however, 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 Board 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.

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.

#### Establishment of Reserve Balance Account and/or Capital Improvement Account

Upon the passage of a resolution by the 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 or a "rainy day" 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. O.A.C. 117-1-03(D). Prescribed forms for presenting financial statements using the 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. Please see the Auditor of State's website for further information: [www.auditor.state.oh.us/LocalGovernment/AICPAInterpretation/default.htm](http://www.auditor.state.oh.us/LocalGovernment/AICPAInterpretation/default.htm). 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.

## PROPERTY

### Bidding Procedures

In accordance with O.R.C. 340.03(A)(8)(a) and O.R.C. 340.033(A)(5), Boards are authorized to contract with public and private agencies for the provision of mental health and alcohol and drug addiction services and facilities. However, O.R.C. 340.03(A)(8)(a), O.R.C. 340.033(E), and O.R.C. 307.86 specifically exclude Boards from the competitive bidding requirements for the provision of these services and facilities.

The Supreme Court in *State, ex rel. Doria v. Ferguson*, 145 Ohio St. 12 (1945), held that for contracts for personal services of a personalized nature requiring the exercise of a particular skill and aptitude, competitive bidding for such services is not required by statute.

All other contracts entered into by the Board where the purchase price exceeds twenty-five thousand dollars (\$25,000.00) and does not fall within the exceptions set forth in O.R.C. 307.86, or other applicable statutes, must be obtained through competitive bidding.

Boards should consult with their legal counsel regarding bidding requirements and when they are applicable.

## Gifts

O.R.C. 340.03 (C) authorizes Boards to receive gifts, grants, devises, and bequests of money, and property for the benefit of the purposes for which the Boards were established. Money received in such a manner 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.

## Real Property

By statute, both single-county and joint-county 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 real property for community mental health and alcohol and drug addiction 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. In addition, an annual inventory must be filed with the Board(s) of County Commissioners and county auditor by the second Monday of January in each year. O.R.C. 305.18.

## *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.

## 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, CMH and ADAS 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 properly 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 services, 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.



# APPENDICES



# **FREQUENTLY ASKED QUESTIONS**



## GENERAL

1. *Q. What is "commingling 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 questions 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 an ADAMH/CMH/ADAS 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 agency terminates its relationship with an ADAMH/CMH/ADAS Board?*
  - 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 ADAMH/CMH/ADAS Board members and employees?*
  - A. To receive reimbursements for expenses incurred on business of the Board, 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.

## ADAMH, CMH, and ADAS BOARDS

1. *Q. May an ADAMH/CMH/ADAS 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/CMH/ADAS Board indemnify a 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 member or employee for any action or inaction in that individual's capacity as a Board member or employee who:
    - (i) acted in good faith and in a manner which the individual believed was in the best interest of the Board; or
    - (ii) in a criminal action where the Board employee had no reason to believe his/her conduct was unlawful.

Boards may indemnify such member or employee against any expenses, including attorney fees, that are actually and reasonably incurred in his/her successful defense of a suit or other legal proceeding.
  
3. *Q. Should ADAMH/CMH/ADAS Board members be bonded?*
  - A. It is suggested that all 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 ADAMH/CMH/ADAS Board member expenses, for purposes of reimbursement by the district?*
  - A. 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. In addition, reference should be made to rules of the Department of Mental Health and the Department of Alcohol and Drug Addiction Services on this subject. 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 any elected public officer within the geographical limits to his/her constituency by members of the General Assembly on a statewide basis and by other officials customarily authorized to administer oaths. O.R.C. 3.24.
7. *Q. In carrying out official actions of an ADAMH/CMH/ADAS Board, what constitutes a quorum and a majority vote?*
- A. A quorum for formal action consists of a majority of the 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 an ADAMH/CMH/ADAS 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 Board members and employees within fifteen (15) days of their appointment or employment. Their receipt must be acknowledged in writing. O.R.C. 102.09.
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 Board or the Executive Director of the Board when authorized by the 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 concerning allegedly illegal expenditure of public funds by an ADAMH/CMH/ADAS Board, against who 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 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 Board members receive written materials concerning the meeting?*
- A. There is no specific time limit for materials to be submitted to members prior to a meeting unless such a limit is adopted by the 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. Within how many days following a Board meeting should minutes be sent to appropriate persons?*
- A. Again, 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.
15. *Q. Who is accountable if professions mandated by law are not present within Board membership?*
- A. The Board will be expected to have notified all appointing authorities of deficiencies in accountability in this area. For CMH and ADAMH Boards, it should be kept in mind that although one member of the Board must be a psychiatrist, he/she need not be a practicing psychiatrist. In addition, if the appointment of a psychiatrist is not possible, a licensed physician may be appointed in place of the psychiatrist. In the event the appointment of a licensed physician is not possible, the Department of Mental Health may waive the residency requirement, thereby allowing the appointment of a licensed physician or psychiatrist from a contiguous county.
16. *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 ADAMH/CMH/ADAS Board Governance section.
17. *Q. Must ADAMH Boards comply with the "Sunshine Law" and all its provisions?*
- A. Yes. An ADAMH Board is a "public body" as defined in O.R.C. 121.22 (B)(1), and is subject to the provisions of O.R.C. 121.22, commonly referred to as the "Sunshine Law".
18. *Q. Are there any requirements or regulations requiring Board members to submit a financial disclosure statement?*
- A. Yes. Board members are not exempt from the filing requirements of O.R.C. Chapter 102, pursuant to O.R.C. 102.02 (A), by virtue of the new Ethics Commission rules.
19. *Q. Would the county prosecutor be the Board's counsel in legal matters?*
- A. The county prosecutor is required to serve as legal advisor to a single-county Board. He/she is not authorized, however, to serve as legal advisor to a joint-county Board, which may secure private counsel pursuant to O.R.C. 340.04. A single-county Board may only contract for legal services in accordance O.R.C. 305.14.
20. *Q. May the Board establish an executive committee?*
- A. There is no express authority for the formation of an executive committee of the 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 could not take any formal action on behalf of the Board.

21. *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.
22. *Q. May the Board have a savings or checking account?*
- A. No.
23. *Q. What is the proper procedure when an ADAMH/CMH/ADAS 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.
24. *Q. Is it necessary for the ADAMH/CMH/ADAS Board to approve staff and 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 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 Board need not make such decisions on a case-by-case basis. In addition, the Board may choose to delegate the responsibility for making such determinations to the Executive Director of the Board. The Board may choose to define parameters within which such decisions are to be made by the Executive Director.
25. *Q. Is the ADAMH/CMH/ADAS 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. Do Executive Directors have civil service status?*
  - A. Executive Directors, as unclassified employees, serve at the pleasure of the Board.
2. *Q. May an Executive Director be held personally liable for actions of Board employees and contract agencies?*
  - 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. Provisions of such review should be formally adopted by the ADAMH/CMH/ADAS Board and recorded in the journal of proceedings. As each review occurs, it should be noted in the journal of proceedings.
6. *Q. What responsibilities does the Executive Director have concerning the administration of personnel?*
  - A. The Board and the Executive Director have separate and distinct responsibilities regarding personnel. The 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 Board.
7. *Q. Do state statutes require confirmation or ratification by the ADAMH/CMH/ADAS 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 Board and duly noted in the journal of proceedings.

8. Q. *Must employees appointed by the Executive Director be appointed from a certified eligible list prepared by the Division of Personnel in the Ohio Department of Administrative Services?*
- A. If such a list has been prepared for the position and Board in question, the appointment must be made from the top three eligible. However, in most instances no such list is in existence, and an individual may be appointed provisionally.
9. Q. *What are the respective roles of the ADAMH/CMH/ADAS Board member and its Executive Director in determining the compensation of Board employees?*
- A. The Board is only responsible for fixing the specific compensation of the Executive Director. For all other positions, the 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.
10. Q. *What official documents may the Executive Director sign on behalf of the Board?*
- A. The Executive Director may be authorized by resolution to sign documents on behalf of the Board. It is important to note, however, that this does not include the authority to exercise discretionary powers of the Board. Thus, where such an exercise of discretion on the part of the 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.
11. 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 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.
12. Q. *What is the proper procedure for the removal of an Executive Director?*
- A. The 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 journal of proceedings should be maintained in a hardcover binder or book, although it may be loose-leaf to facilitate preparation of the minutes. The pages should be sequentially numbered. 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 open, at reasonable times, to 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. The medium selected for this purpose is up to the Board. Minutes should be attested to and signed by the appropriate officers.
6. *Q. How long must official minutes be retained?*
  - A. The Ohio County Records Manual, prepared by the Ohio Historical Society, recommends permanent retention of the minutes. In any event, destruction of such records require approval of the county records commission and the Auditor of State, as well as sixty (60) days' notice to the archivist of the Ohio Historical Society.

## CONTRACTS

1. *Q. What are the recommended minimal provisions of a contract between an ADAMH/CMH/ADAS Board and a contract agency?*
  - A. This is a complex topic, and reference should be made to the contracts portion of this Handbook, as well as requirements of the Department of Mental Health, the Department of Alcohol and Drug Addiction Services and legal counsel. However, provisions concerning the following topics are recommended: (1) Modification and Cancellation; (2) Audit Provisions; (3) Property; (4) Cooperative Purchase of Fringe Benefits; (5) Civil Rights Provisions; and (6) 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 and are in the treasury or in the process of collection.
  
3. *Q. What formal action is required by the ADAMH/CMH/ADAS Board for approval of a contract?*
  - A. The 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 an ADAMH/CMH/ADAS Board contract with a profit-making corporation?*
  - A. Yes. There is no statutory requirement that contracts be restricted to non-profit corporations.
  
5. *Q. Must a contract for the provision of mental health and/or drug and alcohol addiction services and facilities be only for a one-year period?*
  - A. No. O.R.C. 340.03(A)(8)(a) and O.R.C. 340.033(A)(5) provide the authority for Boards to enter into contracts with public and private agencies without a restriction regarding the duration of the contract. Thus, there is no statutory restriction that the contract be limited to one year.

## 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 an ADAMH/CMH/ADAS Board?*
  - A. The responsibilities of the county budget commission with respect to ADAMH/CMH/ADAS 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 an ADAMH/CMH/ADAS Board?*
  - A. This is a discretionary matter for the county budget commission.
  
5. *Q. May an ADAMH/CMH/ADAS 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/CMH/ADAS 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 ADAMH/CMH/ADAS 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 ADAMH/CMH/ADAS 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 ADAMH/CMH/ADAS Board required to file a budget with the county auditor for the ensuing fiscal year?*
  - A. Yes. An ADAMH/CMH/ADAS 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 ADAMH/CMH/ADAS 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 on 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 the 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/CMH/ADAS 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 the single-county ADAMH district or the county's contribution to the joint-county ADAMH Board district of which the county is a part, for the operation of mental health and alcohol and drug addiction programs and the acquisition, construction, renovation, financing, maintenance, and operation of such facilities.
  
3. *Q. What constraints are imposed upon campaigning for such levies?*
  - A. Prior to 1979, it had been assumed that public funds could not be expended to promote a tax levy. This rule was overturned, however, by the Ohio Attorney General in 1979 O.A.G. 79-022 and reaffirmed in 1999 O.A.G. 99-030. That opinion stated in pertinent part, that an ADAMH/CMH/ADAS Board is authorized, under the terms of O.R.C. 340.03(A)(7) and O.R.C. 340.033(A)(12) to expend public funds to promote the approval of a tax levy by the electorate, provided that the Board has public funds available that may be expended for that purpose.

## 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 ADAMH/CMH/ADAS 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 ADAMH/CMH/ADAS Board request an audit of a contract agency?*
  - A. Yes. Such request 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) and O.R.C. 340.033(B)).**

# **GLOSSARY**



## GLOSSARY

**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, CMH, or ADAS Board 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 the 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, 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.

**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  
33 North High Street, Suite 500  
Columbus, Ohio 43215  
(614) 224-1111  
[www.oacbha.org](http://www.oacbha.org)

Ohio Department of Alcohol and Drug Addiction Services  
280 North High Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-3445  
[www.odadas.state.oh.us](http://www.odadas.state.oh.us)

Ohio Department of Mental Health  
30 East Broad Street, 8<sup>th</sup> Floor  
Columbus, Ohio 43266-2596  
(614) 466-2596  
[www.mh.state.oh.us](http://www.mh.state.oh.us)

Public Employees Retirement System  
277 East Town Street  
Columbus, Ohio 43215  
(614) 466-2085  
[www.opers.org](http://www.opers.org)

Ohio Ethics Commission  
8 East Long Street, 10<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 466-7090  
[www.ethics.ohio.gov](http://www.ethics.ohio.gov)

Auditor of State  
88 E. Broad St., 5th Floor  
Columbus, OH 43216  
(800) 282-0370 or (614) 466-4514  
[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

Auditor of State Local Government Services Information Line  
1-800-345-2419

Auditor of State Audit Division Information Line  
1-800-282-0370

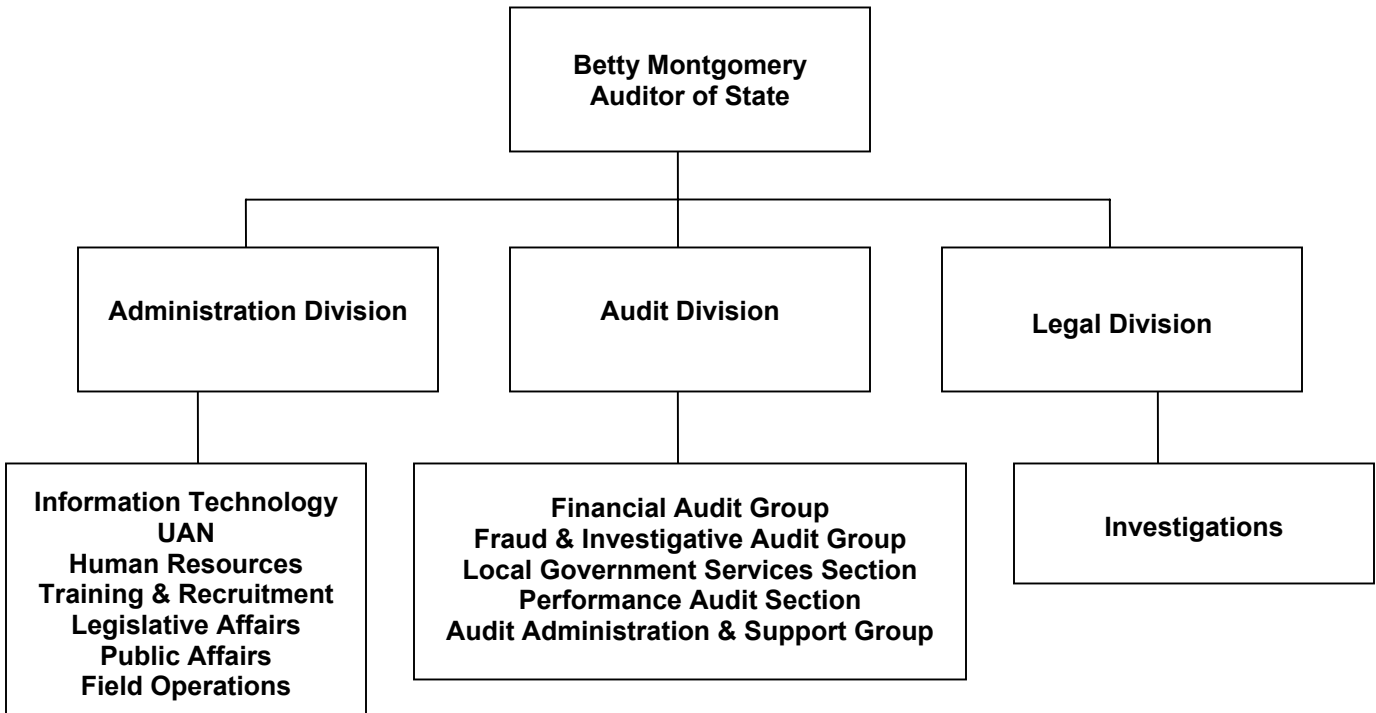
Auditor of State Legal Division Information Line  
1-800-282-0370



# **AUDITOR OF STATE**



**AUDITOR OF STATE**  
**ORGANIZATIONAL CHART**



## ADMINISTRATION DIVISION

The Administration Division is the managing arm of the Ohio Auditor of State's Office. The chief of staff heads the division and reports directly to the Auditor of State. This division is responsible for the day-to-day management and policy decisions of the office.

The Uniform Accounting Network (UAN) is now housed within the Information Technology Section, which is led by the Chief Operating and Information Officer. UAN provides townships, villages, libraries, and special districts with a complete computer system (hardware and software), along with training, manuals, support, and software updates. UAN's accounting and budgetary application, payroll application, and ancillary applications (cemetery and inventory tracking) help to reduce the time necessary for entities to process accounting transactions and maintain the related accounting records. UAN also fosters timely and useful information for the governing body. Currently, 83 percent of the State's 1,310 townships, 53 percent of the State's 709 villages, and 40 percent of the State's 269 libraries are currently using UAN.

### ADMINISTRATION DIVISION

<b>Toll Free</b> .....	<b>(800) 282-0370</b>
<b>Fax</b> .....	<b>(614) 466-4490</b>
<b>Chief of Staff</b> .....	Deb Hackathorn <a href="mailto:dshackathorn@auditor.state.oh.us">dshackathorn@auditor.state.oh.us</a>
<b>Deputy Chief of Staff</b> .....	Jackie DeGenova <a href="mailto:jdegenova@auditor.state.oh.us">jdegenova@auditor.state.oh.us</a>
<b>Chief Information Officer</b> .....	Dave Potts <a href="mailto:dbpotts@auditor.state.oh.us">dbpotts@auditor.state.oh.us</a>
<b>Director of Legislative Affairs</b> .....	Mark Hamlin <a href="mailto:mrhamlin@auditor.state.oh.us">mrhamlin@auditor.state.oh.us</a>
<b>Director of Human Resources</b> .....	Jill Jones <a href="mailto:jdjones@auditor.state.oh.us">jdjones@auditor.state.oh.us</a>
<b>Director of Public Affairs</b> .....	Jen Detwiler <a href="mailto:jadetwiler@auditor.state.oh.us">jadetwiler@auditor.state.oh.us</a>
<b>UAN Support Line</b> .....	<b>(800) 833-8261</b>
<b>UAN e-mail support</b> .....	<a href="mailto:UAN_Support@auditor.state.oh.us">UAN_Support@auditor.state.oh.us</a>

## **AUDIT DIVISION**

The Auditor of State is the constitutional officer responsible for auditing all public offices in Ohio, including cities, villages, schools, universities, counties, townships and state agencies, boards, and commissions.

The office strives, through financial audits of public and quasi-public entities, to ensure that public funds are spent appropriately and lawfully, in accordance with state and local law. The Audit Division is managed by the chief deputy auditor, who reports directly to the Auditor of State.

The Auditor of State's Office employs more than 700 auditors located in nine regional offices in addition to the main office in Columbus: Akron/Canton, Cincinnati, Cleveland, Columbus, Dayton, Athens, Toledo, and Youngstown. Additionally, the State Region, located in Columbus, audits state agencies, boards, and commissions. Each Regional Office is managed by a Chief Auditor who oversees the audits performed by the office within their region.

The Fraud and Investigative Audit Group was created by Auditor Montgomery upon taking office and brings together the Special Audit Division and the Health Care/Contract Audit Section under a new leadership team of former prosecutors and investigators. By bringing more prosecutorial and investigative experience to the table, this group will focus on uncovering public corruption and abuse of public funds.

The Performance Audit Section identifies and helps correct inefficient managerial operations and waste of taxpayer dollars in addition to providing general oversight and assistance to ensure efficient operation of public offices. By statute, the auditor is authorized to conduct a performance audit for any school district or local government deemed to be in fiscal caution (school districts only), fiscal watch or fiscal emergency. Moreover, the Auditor of State is authorized to conduct performance audits upon request.

The Local Government Services Section (LGS) is housed within the Audit Division. LGS serves as a consulting and fiscal advisory group to all governmental agencies and subdivisions, and 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. Publications such as accounting manuals and policy bulletins are distributed to assist local governments in performing their duties and to keep them up to date on their legal requirements.

Auditor of State Montgomery created the Open Government Unit (OGU) in February 2003 to provide training and resources to help local government officials better understand the Ohio Public Records Act and the Ohio Open Meetings Act. The OGU is housed within the Local Government Services section and has one full-time attorney and one full-time paralegal to serve as the office's experts on public records and open meetings. At the request of local officials, the office will offer training seminars and other educational resources on the Sunshine Laws.

## AUDIT DIVISION

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

**Chief Deputy Auditor** ..... Robert Hinkle  
[rhinkle@auditor.state.oh.us](mailto:rhinkle@auditor.state.oh.us)

**Chief Auditor, Performance Audit Section** ..... James Penning  
1-800-626-2297 (Cleveland)  
[jwpenning@auditor.state.oh.us](mailto:jwpenning@auditor.state.oh.us)

**Director, Fraud and Investigative Audit Group** ..... Cynthia Callender  
[cncallender@auditor.state.oh.us](mailto:cncallender@auditor.state.oh.us)

**Chief Auditor, Special Audit Section** ..... Kevin Saionkowski  
[kmsaionkowski@auditor.state.oh.us](mailto:kmsaionkowski@auditor.state.oh.us)

**Chief Auditor, Health Care/Contract Audit Section** ..... Robert Lidman  
[rilidman@auditor.state.oh.us](mailto:rilidman@auditor.state.oh.us)

**Chief Auditor, Quality Assurance Section** ..... W. Brad Blake  
[wblake@auditor.state.oh.us](mailto:wblake@auditor.state.oh.us)

**Chief Auditor, Accounting & Auditing Support Section** ..... Michael Howard  
[mhoward@auditor.state.oh.us](mailto:mhoward@auditor.state.oh.us)

**Chief Auditor, Audit Administration Section** ..... Robert Greenwalt  
[rfgreenwalt@auditor.state.oh.us](mailto:rfgreenwalt@auditor.state.oh.us)

**Chief Auditor, State Region/ISA** ..... James Kennedy  
[jjkennedy@auditor.state.oh.us](mailto:jjkennedy@auditor.state.oh.us)

**Chief of Local Government Services Section** ..... Peter Sorem  
[prsorem@auditor.state.oh.us](mailto:prsorem@auditor.state.oh.us)

**Director, Open Government Unit** ..... Lisa Wu Fate  
[lwfate@auditor.state.oh.us](mailto:lwfate@auditor.state.oh.us)

## REGIONAL OFFICES:

Regional Office	Chief Auditor	Counties Served	Phone
Akron/Canton	Daniel Stuetzer <a href="mailto:djstuetzer@auditor.state.oh.us">djstuetzer@auditor.state.oh.us</a>	Ashland, Coshocton, Holmes, Medina, Richland, Stark, Summit, Tuscarawas, Wayne	(800)443-9272
Athens/SE Ohio	Richard Sketel <a href="mailto:rmsketel@auditor.state.oh.us">rmsketel@auditor.state.oh.us</a>	Athens, Belmont, Gallia, Guernsey, Hocking, Jackson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Scioto, Vinton, Washington	(800)441-1389
Cincinnati	Loren Crisp <a href="mailto:lscrisp@auditor.state.oh.us">lscrisp@auditor.state.oh.us</a>	Adams, Brown, Butler, Clermont, Clinton, Fayette, Hamilton, Highland, Preble, Warren	(800)368-7419
Cleveland	Robert Wilhelm <a href="mailto:rwilhelm@auditor.state.oh.us">rwilhelm@auditor.state.oh.us</a>	Cuyahoga, Geauga, Lake, Lorain	(800)626-2297
Columbus	Patricia Wooldridge <a href="mailto:pawooldridge@auditor.state.oh.us">pawooldridge@auditor.state.oh.us</a>	Crawford, Delaware, Fairfield, Franklin, Knox, Licking, Madison, Marion, Morrow, Pickaway, Ross, Union, Wyandot	(800)443-9275
Dayton	Rick Wade <a href="mailto:rswade@auditor.state.oh.us">rswade@auditor.state.oh.us</a>	Allen, Auglaize, Champaign, Clark, Darke, Greene, Hardin, Logan, Mercer, Miami, Montgomery, Shelby, Van Wert	(800)443-9274
Toledo	George Prephan <a href="mailto:giprephan@auditor.state.oh.us">giprephan@auditor.state.oh.us</a>	Defiance, Erie, Fulton, Hancock, Henry, Huron, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, Wood	(800)443-9276
Youngstown	Rick Kubic <a href="mailto:mrkubic@auditor.state.oh.us">mrkubic@auditor.state.oh.us</a>	Ashtabula, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Portage, Trumbull	(800)443-9271

## LOCAL GOVERNMENT SERVICES REGIONAL CONTACTS:

Toll Free (for all regional contacts).....**1-800-345-2519**

LGS Regional Staff	Chief Project Manager	Counties Served
Northeast	Unice Smith <a href="mailto:ussmith@auditor.state.oh.us">ussmith@auditor.state.oh.us</a>	Ashland, Ashtabula, Carroll, Columbiana, Coshocton, Cuyahoga, Erie, Geauga, Harrison, Holmes, Huron, Know, lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, Wayne
Northwest	Belinda Miller <a href="mailto:blmiller@auditor.state.oh.us">blmiller@auditor.state.oh.us</a>	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
Southeast	Robert Burlenski <a href="mailto:rburlenski@auditor.state.oh.us">rburlenski@auditor.state.oh.us</a>	Athens, Belmont, Fairfield, Gallia, Guernsey, Hocking, Jackson, Jefferson, Lawrence, Licking, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Vinton, Washington
Southwest	David Thompson <a href="mailto:dbthompson@auditor.state.oh.us">dbthompson@auditor.state.oh.us</a>	Adams, Brown, Butler, Clark, Clermont, Clinton, Darke, Fayette, Franklin, Greene, Hamilton, Highland, Madison, Miami, Montgomery, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Warren

## LEGAL DIVISION

The Auditor of State’s Legal Division is primarily responsible for providing legal advice to field auditors, assisting in determinations of whether or not the entity being audited is complying with all applicable laws. Each assistant counsel is assigned to handle legal matters for specific regional offices.

The legal staff can also help public offices prospectively comply with state and federal requirements. Such advice can be found in bulletins, informal opinions, and at Auditor of State conferences. The Legal Division also provides continuing education to elected officials and government employees through specific training programs and conferences on government issues.

The Auditor of State’s investigative staff is now under the management of the Legal Division. The Chief of Investigations as well as the Assistant Chief Legal Counsel works closely with the Fraud and Investigative Audit Group in an effort to aggressively root out fraud and public corruption.

### LEGAL DIVISION

**Toll Free** ..... (800) 282-0370  
**Fax** ..... (614) 466-4333

**Chief Legal Counsel** ..... Pamela J. Vest  
[pjvest@auditor.state.oh.us](mailto:pjvest@auditor.state.oh.us)

**Deputy Chief Legal Counsel & Fiduciary/Employment Counsel** ..... Mary Beth Foley  
[mbfoley@auditor.state.oh.us](mailto:mbfoley@auditor.state.oh.us)

**Assistant Chief Legal Counsel, Special Audits & Fraud and Investigations Unit** ..... James Manken  
[jtmanken@auditor.state.oh.us](mailto:jtmanken@auditor.state.oh.us)

**Assistant Chief Legal Counsel, Southeast Region** ..... Brianne Brown  
[brbrown@auditor.state.oh.us](mailto:brbrown@auditor.state.oh.us)

**Assistant Chief Legal Counsel, Columbus & Toledo Regions** ..... Emily Pilcher  
[eipilcher@auditor.state.oh.us](mailto:eipilcher@auditor.state.oh.us)

**Assistant Chief Legal Counsel, Dayton & State Regions** ..... Sandy Lynskey  
[sllynskey@auditor.state.oh.us](mailto:sllynskey@auditor.state.oh.us)

**Assistant Chief Legal Counsel, Akron/Canton & Youngstown Regions** ..... Hanz Wasserburger  
[hrwasserburger@auditor.state.oh.us](mailto:hrwasserburger@auditor.state.oh.us)

**Assistant Chief Legal Counsel, Cincinnati & Cleveland Regions** ..... Matt Walker  
[mkwalker@auditor.state.oh.us](mailto:mkwalker@auditor.state.oh.us)

**Chief of Investigations** ..... John O’Nan  
[jeonan@auditor.state.oh.us](mailto:jeonan@auditor.state.oh.us)