

**Document:** Proposed Rule

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**TITLE 440 DIVISION OF MENTAL HEALTH**

**Proposed Rule**

LSA Document #00-276

**DIGEST**

Amends 440 IAC 4.1 concerning the certification of community mental health centers to set forth conflict of interest criteria, to specify the minimum staff and services to be provided directly by a community mental health center, and to make technical changes to the existing language of the rule. Repeals 440 IAC 4.3-2-3 and 440 IAC 4.1-2-7. Effective 30 days after filing with the secretary of state.

440 IAC 4.1-1-1	440 IAC 4.1-2-7
440 IAC 4.1-2-1	440 IAC 4.1-2-7
440 IAC 4.1-2-2	440 IAC 4.1-2-7.5
440 IAC 4.1-2-3	440 IAC 4.1-2-9
440 IAC 4.1-2-4	440 IAC 4.1-2-10
440 IAC 4.1-2-5	440 IAC 4.1-2-12
440 IAC 4.1-2-6	

SECTION 1. 440 IAC 4.1-1-1 IS AMENDED TO READ AS FOLLOWS:

**440 IAC 4.1-1-1 Definitions**

**Authority:** IC 12-8-8-4; IC 12-21-2-3; IC 12-29-2-1

**Affected:** IC 12-29-2-1

Sec. 1. The following definitions apply throughout this article:

(1) "Accreditation" means an accrediting agency has ~~granted approval to~~ **determined that** a community mental health center ~~after the center~~ has met specific requirements of the accrediting agency.

(2) "Accrediting agency" means an organization, included on a list of accrediting organizations approved by the division, which has developed clinical, financial, and organizational standards for the operation of a provider of mental health services and which evaluates a center's compliance with its established standards on a regularly scheduled basis.

(3) "Annual assessment" means a written summary of a center's successes and failures in achieving the fiscal and clinical goals established by the center's governing board.

(4) (3) "Certification" means the process used by the division to document a community mental health center's compliance with the statutory and regulatory requirements for operation as a community mental health center, including the issuance of a certificate if the community mental health center is found to comply with the requirements in this article.

(5) (4) "Community mental health center" or "center" means a mental health facility which the division has certified as fulfilling the statutory and regulatory requirements to be a community mental health center.

(6) (5) "Conflict of interest" means ~~activity of an individual (usually related to work or ownership) that is or runs the risk of being an oppositional interest to another interest or activity of the same individual thereby jeopardizing the ability of the individual to act in the best interest of one (1) of the activities:~~ **a situation in which an employee, a board member, an officer of the board of a community mental health center, or a family member of any of these individuals, has a private financial interest such as affiliation through employment or contract with an organization that does business with the community mental health center.**

(7) (6) "Consumer" means a primary consumer.

(7) "Continuum of care" means a range of services the provision of which is assured by a managed care provider. The term includes the following:

(A) Individualized treatment planning to increase patient coping skills and symptom management, which may include any combination of services listed in this subdivision.

**(B) Twenty-four (24) hour a day crisis intervention.**

**(C) Case management to fulfill individual patient needs, including assertive case management when indicated.**

**(D) Outpatient services, including the following:**

**(i) Intensive outpatient services.**

**(ii) Substance abuse services.**

**(iii) Counseling and treatment.**

**(E) Acute stabilization services, including detoxification services.**

**(F) Residential services.**

**(G) Day treatment.**

**(H) Family support services.**

**(I) Medication evaluation and monitoring.**

**(J) Services to prevent unnecessary and inappropriate treatment and hospitalization and the deprivation of a person's liberty.**

(8) "Division" means the division of mental health.

(9) "Primary consumer" means an individual who has received or is receiving mental health services.

(10) "Secondary consumer" means a family member, guardian, or health care decision maker for a primary consumer.

(11) "Strategic plan" means a written summary of the governing board's future goals and objectives for the center which provides a time-specified and systematic approach towards implementation, achievement, and methods of evaluation of the accomplishment of the stated goals and objectives.

*(Division of Mental Health; 440 IAC 4.1-1-1; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1471)*

SECTION 2. 440 IAC 4.1-2-1 IS AMENDED TO READ AS FOLLOWS:

#### **440 IAC 4.1-2-1 Certification by the division**

**Authority: IC 12-8-8-4; IC 12-21-2-3; IC 12-29-2-1**

**Affected: IC 12-29-2-1; IC 12-29-2-14**

Sec. 1. (a) Before an entity may call itself a community mental health center, and before the division may contract with an entity as a community mental health center for mental health services, the entity must be certified by the division under this article.

(b) A center which has applied for certification or which has been certified must provide information related to services as requested by the division and must participate in the division's quality assurance program. A center must respond to a request from the division as fully as it is capable. Failure to comply with a request from the division may result in ~~suspension~~ **termination** of a center's certification.

(c) When a center has demonstrated compliance with all applicable laws and regulations, including the specific criteria in this article, a certificate of certification shall be issued and shall be posted in a conspicuous place in the facility open to clients and the public. *(Division of Mental Health; 440 IAC 4.1-2-1; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1472)*

SECTION 3. 440 IAC 4.1-2-2 IS AMENDED TO READ AS FOLLOWS:

#### **440 IAC 4.1-2-2 Organizational standards and requirements**

**Authority: IC 12-8-8-4; IC 12-21-2-3; IC 12-29-2-1**

**Affected: IC 12-29-2-1**

Sec. 2. (a) The center shall have a governing board.

(b) The purpose of the governing board is to make policy and to assure the effective implementation of the policy.

(c) The governing board shall meet the following criteria:

(1) The governing board shall be composed of at least five (5) individuals. At least one (1) member shall be a primary or secondary consumer.

(2) Each county served by the center shall have at least one (1) member from that county on the governing board.

**(3) No governing board member, including officers of the board, may be employed by or contract with the center.**

**(4) If a board member, including officers of the board, has a conflict of interest, the individual should not vote or use his**

**or her personal influence on the matter. The minutes of the meeting shall reflect that a disclosure was made, the abstention from voting, and that a quorum was present.**

(d) The governing board shall meet on a regular basis. The duties of the governing board include the following:

- (1) Employ a chief executive officer for the center. The chief executive officer shall have at least a master's degree and shall have demonstrated managerial experience in the mental health care or related field. Individuals employed as chief executive officers in a center as of January 1, 1995, shall be considered as meeting this qualification.
- (2) Evaluate the chief executive officer. Evaluations must be conducted every other year, at a minimum.
- (3) Establish and enforce prudent business and fiscal policies for the center.
- (4) Develop and enforce written policies governing center operations.
- (5) Develop and implement an ongoing strategic plan that identifies the priorities of the governing board and utilizes community input and consumer assessment of programs and services offered.
- (6) Assure that minutes of all meetings are maintained and accurately reflect the actions taken.
- (7) Develop and enforce policies and procedures regarding conflict of interest by both governing board members and center employees.
- (8) Conduct an annual assessment ~~which shall include~~ **that includes** the following:
  - (A) A review of the business practices of the center to ensure that:
    - (i) appropriate risk management procedures are in place;
    - (ii) prudent financial practices occur;
    - (iii) there is an attempt at maximizing revenue generation; and
    - (iv) professional practices are maintained in regard to information systems, accounts receivable, and accounts payable. Deficiencies in the center's business practices shall be identified and a plan of corrective action implemented.
  - (B) A review of the programs of the center, assessing whether the programs are well utilized, cost effective, and clinically effective. Deficiencies in the center's current program practices shall be identified and a plan of corrective action implemented.

**(e) The center shall have on staff a medical services director who:**

- (1) has responsibility for the oversight and provision of all medical and clinical services; and**
- (2) is a physician licensed to practice medicine in Indiana.**

~~(e)~~ (f) The chief executive officer may not be the same person as the medical services director.

(g) A center that is part of a general hospital may, in lieu of a separate governing board, have an advisory board. (*Division of Mental Health; 440 IAC 4.1-2-2; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1472*)

SECTION 4. 440 IAC 4.1-2-4 IS AMENDED TO READ AS FOLLOWS:

#### **440 IAC 4.1-2-4 Regular certification**

**Authority: IC 12-8-8-4; IC 12-21-2-3; IC 12-29-2-1**

**Affected: IC 12-7-2-40.6; IC 12-22-2-3; IC 12-29-2-1; 42 U.S.C. 300x**

Sec. 4. (a) ~~Before the temporary certification expires,~~ **An applicant for certification as a community mental health center shall file an application with the division.**

**(b) The application shall contain the following:**

- (1) A description of the organizational structure and mission of the applicant.**
- (2) The location of all operational sites of the applicant and proof of compliance with required health, fire, and safety codes as prescribed by federal and state law.**
- (3) List of governing board members and executive staff.**
- (4) Proof of general liability insurance coverage in the minimum amount of five hundred thousand dollars (\$500,000) for bodily injury and property damage.**
- (5) A copy of the applicant's procedures to ensure protection of client rights and confidentiality.**
- (6) If the center is not operated by a unit of government, the applicant shall submit a copy of the most recent financial audit, including a balance sheet of assets and liabilities of the applicant, which shall be prepared by an independent certified public accountant.**
- (7) If the center is operated by a unit of government, the applicant shall submit either:**

(A) a copy of the most recent financial audit, including a balance sheet of assets and liabilities of the applicant, which shall be prepared by an independent certified public accountant; or

(B) a copy of the most recent state board of accounts audit report regarding the center.

(8) The geographic area the applicant is requesting to serve.

(9) The history of mental health services provided by the applicant in the geographic area the applicant is requesting to serve.

(10) A budget detailing all sources of revenue and expenses.

(11) Proof of the applicant's current federal tax exempt status.

(c) The applicant shall have the following staff:

(1) At least ten percent (10%) of the applicant's direct care staff full time equivalents shall be the following:

(A) MSW social workers, including licensed MSW social workers.

(B) Ph.D. or Psy.D. psychologists, including individuals licensed as health service providers in psychology.

(C) Psychiatrists.

(2) Five percent (5%) of the applicant's direct care staff that qualify under subdivision (1) or the equivalent of fifty percent (50%) of a full-time position, whichever is greater, shall be psychiatrists.

(d) At the time of application, the applicant must provide the following services directly within the limits of the capacity of the center to any individual residing or employed in the applicant's service area, regardless of ability to pay for such services:

(1) Services for seriously mentally ill adults and seriously emotionally disturbed children and adolescents as follows:

(A) Case management.

(B) Crisis intervention.

(C) Outpatient services (including specialized outpatient services for children, the elderly, individuals with a serious mental illness, and residents of the service area who have been discharged from inpatient treatment).

(D) Day treatment or partial hospitalization.

(E) Individualized treatment planning.

(F) Family support services.

(G) Medication evaluation and monitoring.

(H) Services to prevent unnecessary and inappropriate treatment and hospitalization.

(I) Consultation/education services to the communities within the service area.

(2) Services for individuals who abuse alcohol and other drugs as follows:

(A) Crisis intervention.

(B) Consultation/education services to the communities within the service area.

(e) The following services must be available, but may be provided directly by the applicant or by contract with another entity:

(1) For seriously mentally ill adult population, the following:

(A) Inpatient care.

(B) Acute stabilization.

(C) Residential services, in compliance with rules promulgated to implement IC 12-22-2-3.

(2) For seriously emotionally disturbed children and adolescents, the following:

(A) Inpatient care.

(B) Acute stabilization.

(3) For individuals who abuse alcohol and other drugs, the following:

(A) Inpatient care.

(B) Acute stabilization, including detoxification services.

(C) Residential services, in compliance with rules promulgated to implement IC 12-22-2-3.

(D) Day treatment or partial hospitalization.

(E) Outpatient services.

(F) Case management services.

(f) At the time of application, the applicant shall be providing and have accreditation for all of the services that are required to be provided directly for each of the following populations:

(1) seriously emotionally disturbed children and adolescents;

**(2) seriously mentally ill adults; and  
(3) individuals who abuse alcohol and other drugs;  
and all other services in the continuum of care that the center is providing directly.**

**(g) The applicant's accreditation must be by an accrediting agency approved by the division.**

**(h)** The applicant must forward to the division proof of accreditation **in all services provided by the applicant**, site survey recommendations from the accrediting agency, and the applicant's responses to the site survey recommendations.

**(i)** The division may require the applicant to correct any deficiencies described in the site survey.

**(j)** The division shall issue regular certification as a community mental health center to the applicant after the division has determined that the applicant meets all criteria for a community mental health center set forth in this rule and in federal and state law.

**(k)** The certification shall expire ninety (90) days after the expiration of the center's accreditation from the accrediting agency designated by the center as its official accrediting agency.

**(l)** If an applicant is ~~not accredited before the expiration of a temporary~~ **denied** certification, a new application for certification ~~must~~ **may not** be submitted **until twelve (12) months have passed.** (*Division of Mental Health; 440 IAC 4.1-2-4; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1473*)

SECTION 5. 440 IAC 4.1-2-5 IS AMENDED TO READ AS FOLLOWS:

#### **440 IAC 4.1-2-5 Maintenance of certification**

**Authority: IC 12-8-8-4; IC 12-21-2-3; IC 12-27-1-4; IC 12-29-2-1**

**Affected: IC 12-29-2-1**

Sec. 5. Maintenance of certification is dependent upon the following:

(1) The center shall maintain accreditation from an approved accrediting agency. The division shall annually provide all centers with a list of accrediting agencies approved by the division.

(2) The center shall purchase and maintain general liability insurance in the minimum amount of five hundred thousand dollars (\$500,000) for bodily injury and property damage.

(3) An audit of the financial operations of the center shall be performed annually by an independent certified public accountant. The audit, including the management letter, shall be forwarded to the division within six (6) months of the end of the entity's fiscal year.

(4) The center shall have written policies and enforce these policies to support and protect the fundamental human, civil, constitutional, and statutory rights of each client. The center shall give a written statement of rights to each client and, in addition, the center shall document that center staff provides an oral explanation of these rights to each client.

(5) The center shall maintain compliance with required health, fire, and safety codes as prescribed by federal, ~~and~~ state, **and local** law.

(6) The center shall serve the population groups listed at 440 IAC 4-3-1.

**(7) The center shall continue to meet all staff and service requirements set forth at section 4 of this rule.**

**(8)** The center shall comply with federal and state law regarding community mental health centers. (*Division of Mental Health; 440 IAC 4.1-2-5; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1473*)

SECTION 6. 440 IAC 4.1-2-6 IS AMENDED TO READ AS FOLLOWS:

#### **440 IAC 4.1-2-6 Notification of changes**

**Authority: IC 12-8-8-4; IC 12-21-2-3; IC 12-27-1-4; IC 12-29-2-1**

**Affected: IC 12-27**

Sec. 6. A center must notify the division, in writing, of any of the following **within thirty (30) days after the occurrence:**

(1) Change in the location of the center's operational site.

(2) Change in the president or treasurer of the governing board.

(3) Change in the chief executive officer of the center.

- (4) Substantial change in the primary program focus.
  - (5) ~~Change in~~ The **date of the accreditation survey and the name of the** accrediting agency to provide accreditation.
  - (6) Change in the accreditation status of the center.
  - (7) The initiation of bankruptcy proceedings.
  - (8) **Adverse action against the entity as the result of** the violation of health, fire, or safety codes as prescribed by federal, **and** state, **or local** law.
  - (9) Documented violation of the rights of an individual being treated for mental illness under IC 12-27.
- (Division of Mental Health; 440 IAC 4.1-2-6; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1473)

SECTION 7. 440 IAC 4.1-2-7.5 IS ADDED TO READ AS FOLLOWS:

**440 IAC 4.1-2-7.5 Conditional certification**

**Authority: IC 12-8-8-4; IC 12-21-2-3; IC 12-29-2-1**

**Affected: IC 12-29-2-1**

**Sec. 7.5. (a) The division shall change the certification status of a community mental health center to that of conditional certification if the division determines that the center has not met the requirements in this article or has not met the requirements of a contract with the division.**

**(b) Within a conditional certification period, the division may:**

- (1) grant an extension of the conditional certification or certifications;**
- (2) reinstate the regular certification of the center if the division requirements are met within the imposed deadline; or**
- (3) terminate the entity's certification as a community mental health center if the division requirements are not met within the imposed deadline.**

**(c) The division shall notify the chief executive officer of the center of the change in certification status in writing. The notice shall include the following:**

- (1) The standards not met and the actions the center must take to meet those standards.**
- (2) The amount of time granted the center to meet the required standard.**
- (3) Actions to be taken by the center during the time period of the extension.**

**(d) The division has the discretion to determine the time period and frequency of a conditional certification, however, a conditional certification plus any extensions may not exceed twelve (12) months.**

**(e) Extension requirements shall include the following:**

- (1) If the division grants an extension of a conditional certification, the division shall notify the center in writing.**
- (2) The notice shall include the following:**
  - (A) The time period of the extension.**
  - (B) The standards not met and the actions the center must take to meet those standards.**
  - (C) Actions to be taken by the center during the time period of the extension.**

**(f) If the center does not attain the improvements required by the division within the period of time required, the center's certification shall be terminated. (Division of Mental Health; 440 IAC 4.1-2-7.5)**

SECTION 8. 440 IAC 4.1-2-9 IS AMENDED TO READ AS FOLLOWS:

**440 IAC 4.1-2-9 Termination of certification**

**Authority: IC 12-8-8-4; IC 12-21-2-3; IC 12-29-2-1**

**Affected: IC 12-29-2-1**

**Sec. 9. The division may ~~suspend~~ terminate certification issued under this article upon the division's investigation and determination of the following:**

- (1) A substantive change in the operation of the center which, under the standards for accreditation, would cause the accrediting agency to revoke the accreditation.**
- (2) Failure of the center to regain accreditation within ninety (90) days following expiration of the center's current accreditation**

by the center's accrediting agency.

(3) Failure to comply with this article.

(4) Failure to forward the annual audit and management letter required by this article to the division.

(5) That the physical safety of the clients or staff of the center is compromised by a physical or sanitary condition of the center or of a physical facility of a center.

(6) The annual audit indicates evidence of fiscal mismanagement.

(7) Violation of a federal, ~~or~~ state, **or local** statute, **ordinance**, rule, or regulation in the course of the operation of the center **that endangers the health, safety, or continuity of services to consumers.**

**(b) If the division terminates an entity's certification as a community mental health center, the entity may not reapply to become a community mental health center until a lapse of twelve (12) months from the date of termination.** *(Division of Mental Health; 440 IAC 4.1-2-9; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1474)*

SECTION 9. 440 IAC 4.1-2-10 IS AMENDED TO READ AS FOLLOWS:

**440 IAC 4.1-2-10 Contract payments**

**Authority:** IC 12-8-8-4; IC 12-21-2-3; IC 12-29-2-1

**Affected:** IC 12-29-2-1

Sec. 10. (a) Upon ~~suspension or~~ termination of a center's certification, the division shall suspend payment of contracts between the division and the center in whole or in part.

(b) The division may exercise all rights and claims available by contractual agreement or by federal or state law.

(c) The division shall notify the Indiana department of administration that the center's certification has been ~~suspended or~~ terminated. ~~so that any other state agency having a contract with the center may be notified of the division's suspension or termination of the center's certification.~~ *(Division of Mental Health; 440 IAC 4.1-2-10; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1474)*

SECTION 10. 440 IAC 4.1-2-12 IS ADDED TO READ AS FOLLOWS:

**440 IAC 4.1-2-12 Appeal rights**

**Authority:** IC 12-21-2-3; IC 12-29-2-1

**Affected:** IC 4-21.5-3; IC 12-29-2-1

**Sec. 12. A center that is aggrieved by any adverse action taken under this rule may appeal the action under IC 4-21.5-3.** *(Division of Mental Health; 440 IAC 4.1-2-12)*

SECTION 11. THE FOLLOWING ARE REPEALED: 440 IAC 4.1-2-3; 440 IAC 4.1-2-7.

***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on March 23, 2001 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 1, Indianapolis, Indiana the Division of Mental Health will hold a public hearing on proposed amendments concerning the certification of community mental health centers to set forth conflict of interest criteria, to specify the minimum staff and services to be provided directly by a community mental health center, and to make technical changes to the existing language of the rule. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Janet Corson  
Director  
Division of Mental Health