

Document: Proposed Rule, **Register Page Number:** 25 IR 867

Source: December 1, 2001, Indiana Register, Volume 25, Number 3

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**TITLE 440 DIVISION OF MENTAL HEALTH
AND ADDICTION**

NOTE: Under P.L.215-2001, SECTION 54, the name of the Division of Mental Health is changed to Division of Mental Health and Addiction, effective July 1, 2001.

Proposed Rule
LSA Document #01-356

DIGEST

Amends 440 IAC 6 concerning the certification of residential care providers to make technical changes to the existing rule to conform to current state law and to clarify the requirements of residential care providers. Effective 30 days after filing with the secretary of state.

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| 440 IAC 6-1-1 | 440 IAC 6-2-5 |
| 440 IAC 6-2-1 | 440 IAC 6-2-6 |
| 440 IAC 6-2-2 | 440 IAC 6-2-7 |
| 440 IAC 6-2-3 | 440 IAC 6-2-8 |
| 440 IAC 6-2-4 | 440 IAC 6-2-9 |

SECTION 1. 440 IAC 6-1-1 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-1-1 Definitions

Authority: IC 12-8-8-4; IC 12-21-2-3

Affected: IC 12-7-2-40.6; IC 12-21-2-7; IC 12-22-2; IC 23-17

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

- (1) "Annual assessment" means a written summary of a residential provider's successes and failures in achieving the fiscal and clinical goals established by the governing board.
- (2) "Certification" means the process used by the division to document a residential care provider's compliance with the statutory and regulatory requirements for operation as a residential care provider, including the issuance of a certificate if the residential care provider is found to comply with the requirements in this article.
- (3) "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.
- (4) "Consumer" means a primary consumer.
- (5) "Division" means the division of mental health **and addiction**.
- (6) "Managed care provider" means an organization:
 - (A) that:
 - (i) for mental health services, is defined under 42 U.S.C. 300x-2(c); ~~or~~
 - (ii) provides addiction services; **or**
 - (iii) **provides children's mental health services;**
 - (B) that has entered into a provider agreement with the division under IC 12-21-2-7 to provide a continuum of care as defined in IC 12-7-2-40.6 in the least restrictive, most appropriate setting; and
 - (C) that is operated by at least one (1) of the following:
 - (i) A city, town, county, or other political subdivision of Indiana.
 - (ii) An agency of Indiana or of the United States.
 - (iii) A political subdivision of another state.

(iv) A hospital owned or operated by:

(AA) a unit of government; or

(BB) a building authority that is organized for the purpose of constructing facilities to be leased to units of government.

(v) A corporation incorporated under IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17.

(vi) ~~A nonprofit corporation incorporated in another state.~~ **An organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.**

(vii) A university or college.

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

(8) "Residential care provider" means an organization that the division has certified as fulfilling the statutory and regulatory requirements to be a residential care provider.

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

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

(11) ~~"Supervised group living facility" means a facility licensed by the community residential facility council as a supervised group living facility.~~

(Division of Mental Health and Addiction; 440 IAC 6-1-1; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1100; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)

SECTION 2. 440 IAC 6-2-1 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-1 Scope

Authority: IC 12-8-8-4; IC 12-21-2-3

Affected: IC 12-7-2-127; IC 12-21-2-7; IC 12-22-2

Sec. 1. (a) Community mental health centers, which are certified by the division under 440 IAC 4.1, are deemed to also be certified as residential care providers.

(b) Entities certified by the division as managed care providers ~~for individuals with mental illness~~ **under 440 IAC 4.3** are deemed to also be certified as residential care providers.

(c) Entities certified by the division as having a regular certification as addiction services providers under 440 IAC 4.4-2-3 are deemed to also be certified as residential care providers. *(Division of Mental Health and Addiction; 440 IAC 6-2-1; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1104; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2379; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)*

SECTION 3. 440 IAC 6-2-2 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-2 Certification by the division

Authority: IC 12-8-8-4; IC 12-21-2-3

Affected: IC 12-21-2-7; IC 12-22-2

Sec. 2. (a) ~~Before the division an entity may recommend to the community residential facilities council that an entity be granted a license to operate a supervised group living facility,~~ **a semi-independent living program, a sub-acute stabilization facility, a transitional residential facility, or an alternative family for adults program,** the entity ~~managing the facility~~ must be **certified by the division as one (1) of the following:**

(1) A managed care provider.

(2) A community mental health center.

(3) An addiction services provider with a regular certification. ~~or~~

(4) ~~certified by the division~~ **A residential care provider** under this article.

(b) ~~Before the division may contract with an entity to provide a semi-independent group living program, a sub-acute stabilization setting, or an alternative families for adults program, that entity must be:~~

~~(1) a managed care provider;~~

- (2) a community mental health center;
- (3) an addiction services provider with a regular certification; or
- (4) certified by the division under this article.

(b) A residential care provider must apply separately for certification or licensure of the specific facility they intend to operate.

(c) An organization that has applied for certification or has been certified must provide information related to services as requested by the division and must participate in the division's quality assurance program. An organization 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 the ~~refusal~~ **denial or suspension termination** of an organization's certification.

(d) When an organization has demonstrated compliance with all applicable laws and regulations, including the specific criteria in this article, a certificate shall be issued and shall be posted in a conspicuous place in the facility open to ~~clients~~ **consumers** and the public. (*Division of Mental Health and Addiction; 440 IAC 6-2-2; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1101; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2379; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235*)

SECTION 4. 440 IAC 6-2-3 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-3 Organizational standards and requirements

Authority: IC 12-8-8-4; IC 12-21-2-3

Affected: IC 12-21-2-7; IC 12-22-2

Sec. 3. (a) The organization 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.
- (2) At least one (1) member shall be a primary or secondary consumer.
- (3) At least one (1) member shall be licensed by the health professions bureau as a physician or health services professional in psychology.

(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 organization. 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. ~~An individual employed as a chief executive officer in an organization as of January 1, 1995, shall be considered as meeting this qualification.~~
- (2) Evaluate the chief executive officer. Evaluations must be conducted at least every other year.
- (3) Establish and enforce prudent business and fiscal policies for the organization.
- (4) Develop and enforce written policies governing organization 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 organization employees.
- (8) Conduct an annual assessment, including the following:
 - (A) A review of the business practices of the organization to ensure that:
 - (i) appropriate risk management procedures are in place;
 - (ii) prudent financial practices occur;
 - (iii) there is an attempt to maximize 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 organization, assessing whether the programs are well utilized, cost effective, and clinically effective. Deficiencies in the organization's current program practices shall be identified and a plan of corrective action implemented.

(e) The organization shall employ or contract for a professional services director who is licensed as a physician or health service professional in psychology and who is not the same person as the chief executive officer. (*Division of Mental Health and Addiction; 440 IAC 6-2-3; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1101; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235*)

SECTION 5. 440 IAC 6-2-4 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-4 Certification

Authority: IC 12-8-8-4; IC 12-21-2-3

Affected: IC 12-21-2-7; IC 12-22-2

Sec. 4. (a) Before commencing services, an applicant for certification as a residential care provider shall file an application with the division. The application shall contain the following:

- (1) A description of the organizational structure and mission of the applicant.
- (2) A description of services to be provided and how the organization will provide them.
- (3) A 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 resident rights and confidentiality.
- (6) ~~A balance sheet of assets and liabilities~~ **The most recent audit** of the residential care provider, which shall be prepared by an independent certified public accountant.
- (7) Copies of the current professional health provider license of a board member and the professional services director.

(b) When the division determines that:

- (1) an application is satisfactory; **and**
- ~~(2) the proposed services are necessary; and~~
- ~~(3)~~ **(2)** the applicant has sufficient administrative and financial capacity to fulfill its proposed mission;

the division shall issue ~~regular~~ certification to the applicant. ~~Regular Certification is valid for~~ **shall expire** twenty-four (24) months, **after the issuance of the certification or, for an entity that is accredited, ninety (90) days after the expiration of the entity's accreditation.** (*Division of Mental Health and Addiction; 440 IAC 6-2-4; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1102; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235*)

SECTION 6. 440 IAC 6-2-5 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-5 Maintenance of certification

Authority: IC 12-8-8-4; IC 12-21-2-3

Affected: IC 12-21-2-7; IC 12-22-2

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

- (1) The organization shall purchase and maintain general liability insurance in the minimum amount of five hundred thousand dollars (\$500,000) for bodily injury and property damage.
- (2) An audit of the financial operations of the organization shall be performed annually by an independent certified public accountant.
- (3) The organization shall have written policies and enforce these policies to support and protect the fundamental human, civil, constitutional, and statutory rights of each ~~client~~ **consumer**. The organization shall give a written statement of rights to each ~~client~~ **consumer**, and, in addition, the organization shall document that organization staff provides an oral explanation of these rights to each ~~client~~ **consumer**.
- (4) The organization shall maintain compliance with required health, fire, and safety codes as prescribed by federal and state law.
- (5) The organization shall comply with federal and state law regarding residential care providers.

(6) The residential care provider shall meet all the requirements regarding the specific facility for which they are certified or licensed.

(Division of Mental Health and Addiction; 440 IAC 6-2-5; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1102; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)

SECTION 7. 440 IAC 6-2-6 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-6 Notification of changes

Authority: IC 12-8-8-4; IC 12-21-2-3

Affected: IC 12-21-2-7; IC 12-22-2

Sec. 6. An organization must notify the division, in writing, of any of the following:

- (1) Change in the location of the organization's operational site.
- (2) Change in the president or treasurer of the governing board.
- (3) Change in the chief executive officer of the organization or professional services director.
- (4) Substantial change in the primary program focus.
- (5) The initiation of bankruptcy proceedings.
- (6) The documented violation of health, fire, or safety codes as prescribed by federal and state law.
- (7) The documented violation of the rights of an individual **being treated for mental illness under IC 12-27: who is a client of the residential provider.**

(Division of Mental Health and Addiction; 440 IAC 6-2-6; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1102; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)

SECTION 8. 440 IAC 6-2-7 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-7 Renewal of certification

Authority: IC 12-8-8-4; IC 12-21-2-3

Affected: IC 12-21-2-7; IC 12-22-2

Sec. 7. (a) An organization shall submit a request for recertification, including the following:

- (1) Proof of liability insurance in the amount required by the division.
- (2) Proof of compliance with applicable health, fire, and safety codes as prescribed by federal and state law.
- (3) Copy of the most recent annual audit and the management letter.
- (4) Copies of current professional health provider license of a board member and the professional services director.

(b) The division may require the applicant to resolve any problems identified by the division before the division issues a renewal certificate.

(c) When a request for renewed certification is deemed to be complete by the division and the applicant has taken any action that is deemed necessary by the division, the division shall issue a new certification. The renewed certification shall expire twenty-four (24) months after the issuance of a renewal certification by the division **or, for an entity that is accredited, ninety (90) days after the expiration of the entity's accreditation.** *(Division of Mental Health and Addiction; 440 IAC 6-2-7; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1103; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)*

SECTION 9. 440 IAC 6-2-8 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-8 Termination of certification

Authority: IC 12-8-8-4; IC 12-21-2-3

Affected: IC 12-21-2-7; IC 12-22-2

Sec. 8. 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 organization.
- (2) Failure to comply with this article.

(3) That the physical safety of the ~~clients~~ **consumers** or staff of the organization is compromised by a physical or sanitary condition of the organization or of a physical facility of the organization.

(4) Violation of a federal or state statute, rule, or regulation in the course of the operation of the organization **or its facilities.**

(Division of Mental Health and Addiction; 440 IAC 6-2-8; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1103; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)

SECTION 10. 440 IAC 6-2-9 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-9 Notification of termination

Authority: IC 12-8-8-4; IC 12-21-2-3

Affected: IC 12-21-2-7; IC 12-22-2

Sec. 9. ~~(a) Upon suspension of the organization's certification, the division shall so notify the community residential facility council.~~

~~(b) The division shall notify the Indiana department of administration that the organization's certification has been suspended or terminated so that any other state agency having a contract with the organization may be notified of the division's suspension or termination of the organization's certification.~~ *(Division of Mental Health and Addiction; 440 IAC 6-2-9; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1103; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on December 27, 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 and Addiction will hold a public hearing on proposed amendments concerning the certification of residential care providers to make technical changes to the existing rule to conform to current state law and to clarify the requirements of residential care providers. 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
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