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TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

Proposed Rule LSA Document #02-218

DIGEST

Amends 440 IAC 4-3-1 to delete exemptions from mandatory services for community mental health centers. Amends 440 IAC 4.1-2-1, 440 IAC 4.1-2-4, 440 IAC 4.1-2-5, and 440 IAC 4.1-2-9 to require an applicant to be assigned an exclusive geographic primary service area before it is certified as a community mental health center, and to make the maintenance of financial viability a requirement of certification. Adds 440 IAC 4.1-3 to establish exclusive geographic primary service areas for community mental health centers, including criteria and procedures to justify a change of an assignment of a community mental health center to a primary service area. Effective July 1, 2003.

440 IAC 4-3-1	440 IAC 4.1-2-5
440 IAC 4.1-2-1	440 IAC 4.1-2-9
440 IAC 4.1-2-4	440 IAC 4.1-3

SECTION 1. 440 IAC 4-3-1 IS AMENDED TO READ AS FOLLOWS:

440 IAC 4-3-1 Mandatory services

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

Affected: IC 12-29

Sec. 1. (a) The management of services provided by the center shall be so structured as to promote continuity of care to every client. All services of the center must be readily accessible, and information easily transferable among service elements. The department and the center shall cooperate in defining and putting into operation policies and procedures that require clinical coordination by the center for patients going into the state hospital, and for patients coming from the state hospital to the care of the center.

(b) In order to be designated as a community mental health center, a provider shall, within its designated service area, provide in the following six (6) areas for the treatment and prevention of mental disorders:

- (1) Inpatient services.
- (2) Residential services.
- (3) Partial hospitalization services.
- (4) Outpatient services.
- (5) Consultation-education services.
- (6) Community support program.

(c) Centers are expected to stay sensitive to the demographic makeup of their service areas when planning for the provision of service. Care should be taken to provide for the specialized service needs of children, the older adult, and residents previously discharged from inpatient treatment at a mental health facility. Within the identified framework of mandatory services, the following target populations must be addressed:

- (1) ~~chronically~~ **Seriously** mentally ill.
- (2) Seriously emotionally ~~handicapped~~ **disturbed** children and adolescents.
- (3) Alcohol and other drug abusers.
- (4) Older adults.

(d) In addition to the above required services, the center may provide additional services to the service area if availability of resources can be demonstrated.

~~A center may request exemption from providing a described mandatory service for a fixed time period, not to exceed one (1) year. Such request shall be in writing and accompanied by supporting documentation. This exemption shall be renewable at the department's discretion. (Division of Mental Health and Addiction; 440 IAC 4-3-1; filed Jun 29, 1983; 10:31 a.m.: 6 IR 1398; filed Jan 22, 1988, 1:55 p.m.: 11 IR 1777; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)~~

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 12-29-2-14

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, **including the assignment of an exclusive geographic primary service area, under 440 IAC 4.1-3.**

(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 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 shall be issued and shall be posted in a conspicuous place in the facility open to clients and the public. (*Division of Mental Health and Addiction; 440 IAC 4.1-2-1; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1472; filed Jun 28, 2001, 4:24 p.m.: 24 IR 3643*)

SECTION 3. 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; 42 U.S.C. 300x

Sec. 4. (a) 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) (8) The history of mental health services provided by the applicant in and the geographic area the applicant is requesting to serve. has served.~~

- ~~(10)~~ (9) A budget detailing all sources of revenue and expenses.
~~(11)~~ (10) 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 some combination of the following:

- (A) Licensed clinical social workers.
- (B) Licensed mental health counselors.
- (C) Licensed marriage and family therapists.
- (D) Clinical nurse specialists.
- (E) Licensed psychologists, including individuals licensed as health service providers in psychology.
- (F) Psychiatrists licensed to practice in the state of Indiana.

(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 **and in this article, including the assignment of an exclusive geographic primary service area under 440 IAC 4.1-3.**

(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 denied certification, a new application for certification may not be submitted until twelve (12) months have passed. (*Division of Mental Health and Addiction; 440 IAC 4.1-2-4; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1473; filed Jun 28, 2001, 4:24 p.m.: 24 IR 3644*)

SECTION 4. 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 demonstrate the administrative and financial capacity to continue successful operations as a viable entity, including the following:**

(A) 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.

~~(B)~~ (B) 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.

~~(3)~~ (3) 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.

~~(4)~~ (4) The center shall maintain compliance with required health, fire, and safety codes as prescribed by federal, state, and local law.

~~(5)~~ (5) The center shall serve the population groups listed at 440 IAC 4-3-1.

~~(6)~~ (6) The center shall continue to meet all staff and service requirements set forth at section 4 of this rule.

~~(7)~~ (7) The center shall comply with federal and state law regarding community mental health centers.

(*Division of Mental Health and Addiction; 440 IAC 4.1-2-5; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1473; filed Jun 28, 2001, 4:24 p.m.: 24 IR 3646*)

SECTION 5. 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. (a) The division may 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 **or other financial or legal information** indicates evidence of fiscal mismanagement **or the failure to maintain financial viability**.
- (7) Violation of a federal, 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 and Addiction; 440 IAC 4.1-2-9; filed Jan 18, 1995, 10:50 a.m.: 18 IR 1474; filed Jun 28, 2001, 4:24 p.m.: 24 IR 3647*)

SECTION 6. 440 IAC 4.1-3 IS ADDED TO READ AS FOLLOWS:

Rule 3. Exclusive Geographic Primary Service Areas

440 IAC 4.1-3-1 Community mental health center; exclusive geographic primary service areas

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

Affected: IC 12-29-2-1

Sec. 1. (a) Each community mental health center (CMHC) shall have a mutually exclusive geographic primary service area for purposes of IC 12-29-2, designated by the division of mental health and addiction.

(b) The exclusive geographic primary service areas, taken together, shall cover the entire state of Indiana.

(c) The director of the division of mental health and addiction shall issue a list of the official exclusive geographic primary service areas assigned to each CMHC, pursuant to P.L.79-2002, SECTION 6. This list shall be updated whenever there is a change pursuant to this rule.

(d) The director of the division of mental health and addiction shall not reassign any exclusive geographic primary service area unless one (1) of the following occurs:

- (1) An order has been issued by a hearing officer under this rule.**
- (2) A request for a change in the exclusive geographic primary service area has been made and the CMHCs and counties that would be affected by the change concur with the change in writing.**
- (3) An existing CMHC, which has an exclusive geographic primary service area, is denied certification or is terminated under this article.**

(*Division of Mental Health and Addiction; 440 IAC 4.1-3-1*)

440 IAC 4.1-3-2 Obligations of each community mental health center regarding the exclusive geographic primary service area

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

Affected: IC 12-26-6-8; IC 12-26-7-3

Sec. 2. (a) Each community mental health center (CMHC) is obligated to provide accessible services for all individuals, within the limits of its capacity, in its exclusive geographic primary service area.

(b) Except for consumers who are enrolled by another CMHC or managed care provider, the CMHC is obligated to provide commitment screening to a state institution administered by the division of mental health

and addiction for any individual residing in the CMHC's exclusive geographic primary service area who presents for screening services or is referred for screening services.

(c) Commitment screening to a state institution administered by the division of mental health and addiction shall be done by the CMHC that enrolled them, or by the CMHC with which the managed care provider that enrolled the person has a screening contract.

(d) Notwithstanding subsection (b), the designation of an exclusive geographic primary service area may not limit an eligible consumer's right to choose or access the treatment services of any provider who is certified by the division of mental health and addiction to provide publicly supported mental health services. (*Division of Mental Health and Addiction; 440 IAC 4.1-3-2*)

440 IAC 4.1-3-3 County complaints regarding a community mental health center

Authority: IC 12-21-2-3; IC 12-29-2-1; IC 12-29-2-16

Affected: IC 12-7-2-40.6

Sec. 3. (a) If the county commissioners have a concern about the community mental health center (CMHC) that is assigned to their county as part of its exclusive geographic primary service area, the county commissioners shall first take their complaint to the CMHC.

(b) If the concern cannot be resolved, the county commissioners may make a complaint to the director of the division of mental health and addiction. The director of the division of mental health and addiction shall mediate the disagreement between the CMHC and the county. The CMHC and the county have ninety (90) days to resolve their differences.

(c) If the CMHC and the county have not resolved their differences within ninety (90) days, the county commissioners may file a request with the director of the division of mental health and addiction to have another CMHC assigned to their county as a part of the CMHC's exclusive geographic primary service area. (*Division of Mental Health and Addiction; 440 IAC 4.1-3-3*)

440 IAC 4.1-3-4 Changes of the exclusive geographic primary service areas

Authority: IC 12-21-2-3; IC 12-29-2-1; IC 12-29-2-16

Affected: IC 4-21.5-3; IC 12-7-2-40.6

Sec. 4. (a) To change an exclusive geographic primary service area, a request to change an exclusive geographic primary service area must be made by the county commissioners or by a community mental health center (CMHC) to the director of the division of mental health and addiction.

(b) A CMHC may not request to be divested of the responsibility of a county that it has been assigned as a part of its exclusive geographic primary service area.

(c) A CMHC that is under a conditional certification status from the division of mental health and addiction or under a conditional accreditation status is not eligible to add territory in a change of an exclusive geographic primary service area.

(d) The notice of a request shall be made at least eighteen (18) months prior to the requested effective date of the change.

(e) Except in emergencies, as determined by the director, changes in the exclusive geographic primary service areas for purposes of IC 12-29 shall take effect on the next July 1.

(f) The director shall notify all regularly certified CMHCs when a request to change an exclusive geographic primary service area is received.

(g) A CMHC may concur with the change in writing.

(h) If the CMHCs affected by the request do not concur fully with the requested change, the director shall appoint a hearing officer under IC 4-21.5-3 to consider the evidence and issue an order regarding the requested change of an exclusive geographic primary service area.

(i) The hearing officer shall issue an order based on the following information regarding the CMHCs serving the contested area:

- (1) An unduplicated count of consumers served in the contested area, as reported to the division of mental health and addiction on the consumer service data system during the current and the average of two (2) previous fiscal years.
- (2) The availability of accessible services and the past delivery of those services to residents of the contested area.
- (3) The completeness of the continuum of care, defined at IC 12-7-2-40.6, available in the contested area.
- (4) The geographic accessibility of services.
- (5) Information from and preferences of local community advocates and officials.
- (6) The accreditation status of the centers.
- (7) The certification status of the centers.
- (8) Reports that are required by IC 12-29-2-16.
- (9) Any other relevant information.

(j) The hearing officer shall consider all of the above in the order regarding the county or portion of a county awarded to each center. (*Division of Mental Health and Addiction; 440 IAC 4.1-3-4*)

440 IAC 4.1-3-5 Redesignation of the exclusive geographic primary service area

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

Affected: IC 12-29-2-1

Sec. 5. (a) When an existing community mental health center (CMHC), which has an exclusive geographic primary service area, is denied certification or is terminated under this article, the director shall redesignate that exclusive geographic primary service area to another or to multiple CMHCs.

(b) If there is a new CMHC applicant that has completed all of the requirements for certification except being assigned an exclusive geographic primary service area, that new CMHC applicant may be assigned the exclusive geographic primary service area.

(c) Changes in the exclusive geographic primary service areas for purposes of this section shall take effect as soon as the designation is made.

(d) The director shall notify all counties in the exclusive geographic primary service area and all regularly certified CMHCs when an existing CMHC is denied certification or is terminated. (*Division of Mental Health and Addiction; 440 IAC 4.1-3-5*)

440 IAC 4.1-3-6 Designation of a new community mental health center

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

Affected: IC 12-29-2-1

Sec. 6. (a) A new community mental health center (CMHC) is not automatically entitled to be assigned an exclusive geographic primary service area.

(b) No CMHC applicant may be certified as a CMHC if it cannot be assigned an exclusive geographic primary service area. (*Division of Mental Health and Addiction; 440 IAC 4.1-3-6*)

440 IAC 4.1-3-7 County request that it be assigned to a new community mental health center

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

Affected: IC 4-21.5-3; IC 12-7-2-40.6

Sec. 7. (a) A county may request that their county or a portion of their county containing at least seventy-five thousand (75,000) people be assigned to the new community mental health center (CMHC).

(b) Changes in the exclusive geographic primary service areas for purposes of this section shall take effect on the next July 1.

(c) The director shall notify all regularly certified CMHCs when a request to change an exclusive geographic primary service area is received.

(d) An existing CMHC may concur with the change in writing.

(e) If the CMHCs affected by the request do not concur fully with the requested change, the director shall appoint a hearing officer under IC 4-21.5-3 to consider the evidence and issue an order regarding the requested change of an exclusive geographic primary service area.

(f) The hearing officer shall issue an order based on the following information regarding the CMHCs serving the contested area:

- (1) An unduplicated count of consumers served in the contested area, as reported to the division of mental health and addiction on the consumer service data system during the current and the average of two (2) previous fiscal years.**
- (2) The availability of accessible services, and the past delivery of those services to residents of the contested area.**
- (3) The completeness of the continuum of care, defined at IC 12-7-2-40.6, available in the contested area.**
- (4) The geographic accessibility of services.**
- (5) Information from and preferences of local community advocates and officials.**
- (6) The accreditation status of the centers.**

(g) The hearing officer shall consider all of the above in the order regarding the county or portion of a county awarded to each center. (Division of Mental Health and Addiction; 440 IAC 4.1-3-7)

440 IAC 4.1-3-8 Appeal rights

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

Affected: IC 4-21.5-5

Sec. 8. A community mental health center (CMHC) that is aggrieved by any adverse action taken under this rule may appeal the action under IC 4-21.5-5. (Division of Mental Health and Addiction; 440 IAC 4.1-3-8)

SECTION 7. SECTIONS 1 through 6 of this document take effect July 1, 2003.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 26, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 9, Indianapolis, Indiana the Division of Mental Health and Addiction will hold a public hearing on proposed amendments regarding the establishment of exclusive geographic primary service areas for community mental health centers, including criteria and procedures to justify a change of an assignment of a community mental health center to a primary service area. 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 and Addiction