

**RULES
OF
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
DIVISION OF MENTAL HEALTH SERVICES**

**CHAPTER 0940-3-10
COMMUNITY MENTAL HEALTH CENTER COOPERATION**

TABLE OF CONTENTS

0940-3-10-.01	Purpose	0940-3-10-.05	Review and Findings
0940-3-10-.02	Definitions	0940-3-10-.06	Regulation and Supervision
0940-3-10-.03	Application Procedures	0940-3-10-.07	Termination of the COPA by Certificate Holders
0940-3-10-.04	Comments and Public Hearing		

0940-3-10-.01 PURPOSE.

- (1) These rules implement the Community Mental Health Center Cooperation Act of 1998 ("Act"), Tennessee Code Annotated, Section 33-2-701 et seq. The Act, under certain circumstances, allows two or more community mental health centers within the State of Tennessee to negotiate and enter into a cooperative agreement between or among themselves upon making an application to the Department for a certificate of public advantage ("COPA"). The Tennessee Department of Mental Health and Developmental Disabilities shall issue a COPA to applicants if the Department determines, in consultation with the Office of Attorney General for the State of Tennessee, that the likely benefits resulting from the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the cooperative agreement. Once a COPA is issued, the Department shall actively and continually supervise and oversee the implementation and operation of the cooperative agreement to the fullest extent required by law.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302(a)(3), 33-1-304, 33-1-305(1), 33-1-309, 33-2-101, and 33-2-701, et seq. **Administrative History:** Original rule filed June 29, 2004; effective September 12, 2004.

0940-3-10-.02 DEFINITIONS. The following definitions shall apply to terms as they appear in these rules unless the context clearly requires otherwise.

- (1) "Applicant" or "applicants" means a community mental health center that is a party to a cooperative agreement for which an application for a certificate of public advantage is submitted.
- (2) "Attorney General" means the Office of the Attorney General for the State of Tennessee.
- (3) "Certificate Holder" means a community mental health center that is a party to a cooperative agreement that has received a certificate of public advantage.
- (4) "Certificate of Public Advantage" or "COPA" means the certificate, issued by the Department, that approves and authorizes a cooperative agreement.
- (5) "Commissioner" means the Commissioner of Mental Health and Developmental Disabilities or his or her designee.
- (6) "Community mental health center" means:
 - (a) A community mental health center as defined in Tennessee Code Annotated, Section 33-1-101(6); or
 - (b) Any parent or corporate affiliate of a community mental health center.

(Rule 0940-3-10-.02, continued)

- (7) "Cooperative agreement" means an agreement among two (2) or more community mental health centers for the offering, provision, operation, coordination, planning, funding, pricing, contracting, utilization review, or management of mental health and related services pursuant to programs funded or administered by departments or agencies of state government, including, but not limited to, the TennCare program, or the sharing, allocation, or referral of service recipients, personnel, instructional programs, support services, ancillary services, and facilities, or other services traditionally offered by community mental health centers for such programs.
- (8) "Department" means the Tennessee Department of Mental Health and Developmental Disabilities.
- (9) "Intervenor" means any hospital, physician, allied health professional, healthcare provider or other person furnishing goods or services to, or in competition with, a community mental health center, insurer, hospital service corporation, medical service corporation, hospital and medical services corporation, preferred provider organization, health maintenance organization, behavioral health organization, or any employer or association that directly or indirectly provides health care benefits to its employees or members.
- (10) "Initial filing" means a summary of the proposed cooperative agreement, describing the affected geographic area, and the proposed benefits and disadvantages of the cooperative agreement.
- (11) "Newspaper of General Circulation" means a publication regularly issued at least as frequently as once a week for a definite price, having a second-class mailing privilege, being not less than four (4) pages, published continuously during the immediately preceding one-year period, which is published for the dissemination of news of general interest, and is circulated generally in the county or counties in which it is published and in which notice is given. A "newspaper of general circulation" shall not be construed to include a newspaper which is not engaged in the distribution of news of general interest to the public, but which is primarily engaged in the distribution of news of interest to a particular group of citizens.
- (12) "Notice of Completion of Application" means a written notice from the Department to the applicants indicating that their application is complete.
- (13) "Person" is as defined in Tennessee Code Annotated, Section 68-11-102(13).
- (14) "Renewal Application" means an application submitted by certificate holders in order to renew a COPA.
- (15) "Shall" or "Must" indicates a mandatory provision.
- (16) "Should" or "May" indicates a suggestion or a recommendation.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302(a)(3), 33-1-304, 33-1-305(1), 33-1-309, 33-2-101, and 33-2-701, et seq. **Administrative History:** Original rule filed June 29, 2004; effective September 12, 2004.

0940-3-10-.03 APPLICATION PROCEDURES.

- (1) The application procedures for obtaining a COPA are as follows:
 - (a) Parties to a cooperative agreement shall jointly apply to the Department for a COPA by submitting one COPA application form on behalf of all parties to a single cooperative agreement.
 - (b) The original and two copies of the application must be submitted to the Department.

(Rule 0940-3-10-.03, continued)

- (c) A copy shall also be submitted by the applicants to the Attorney General the same day that the original is filed with the Department.

(2) The COPA application form:

- (a) shall identify the legal name or names of each applicant and the address of the principal business office of each applicant;
- (b) shall identify the person(s) authorized to receive notices and communications with respect to each party's application as well as answer questions regarding the cooperative agreement. Included shall be the person(s) name, business address, business telephone number, facsimile copier number and electronic mail address;
- (c) shall attach an executed written copy of the cooperative agreement for which the application is being made;
- (d) shall present a description of the activity that is the subject of the cooperative agreement, including the duration of the cooperative agreement, and a description of the relevant market;
- (e) shall present a description of any consideration, direct or indirect, attributable to the activity contemplated under the cooperative agreement that passes to any party to the cooperative agreement;
- (f) shall address each of the following benefits that might result from the cooperative agreement:
 - 1. enhancement of the quality of mental health and mental health-related care provided to Tennessee citizens, especially those receiving such services pursuant to programs funded or administered by departments or agencies of state government;
 - 2. preservation of community mental health facilities in geographical proximity to the communities traditionally served by those facilities;
 - 3. gains in the cost-efficiency of services provided by the community mental health centers involved;
 - 4. improvements in the utilization of mental health resources and equipment;
 - 5. avoidance of duplication of mental health resources; and
 - 6. enhancement of the efficiency of the administration of programs of state government to provide mental health services to citizens of Tennessee.
- (g) shall address each of the following potential disadvantages that might be attributable to any reduction in competition likely to result from the cooperative agreement:
 - 1. the extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations, behavioral health care organizations or other health care payers to negotiate optimal payment and service arrangements with community mental health centers, or other health care providers;
 - 2. the extent of any reduction in competition among physicians, mental health professionals, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, community mental health centers that is likely to result directly or indirectly from the cooperative agreement;

(Rule 0940-3-10-.03, continued)

3. the extent of any likely adverse impact on persons with mental illness or serious emotional disturbance in the quality, availability, and price of health care services; and
 4. the availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.
- (h) shall attach copies of all required public notifications.
- (3) The rules governing the acceptance of the application and the application filing fee are as follows:
- (a) The Department shall accept an application for review and may issue a Notice of Completion of Application once the following occur:
 1. the application has been received by the Department and the Attorney General;
 2. all public notice provisions have been satisfied; including a public hearing if determined necessary by the Department,
 3. a non-refundable application fee of \$5,000.00 has been received.
 - (b) If the Department determines that the application is incomplete, the Department shall not issue the Notice of Completion of Application until the deficiencies in the Application have been cured.
 - (c) In the event that a material change occurs with respect to any information submitted by the applicant(s) in the application, the applicant(s) shall timely provide to the Department a detailed written description of the change. Failure to provide the Department with such written description may result in the rejection of the application by the Department.
 - (d) If the cooperative agreement primarily relates to a program funded or administered by another department or agency of the government of the state of Tennessee, the Department may refer the application to that other department or agency to conduct the review and render the decision required by rule 0940-3-10-.05(4).
- (4) The rules governing public notice are as follows:
- (a) The applicants shall jointly submit a proposed state register notice for approval by the Department. The Department shall amend the notice, if necessary, to provide sufficient or accurate information and publish the notice in the Tennessee Administrative Register. The state register notice shall contain the following information:
 1. the filing date of the application;
 2. the name, address, and telephone number of the person authorized to receive notices and communications with respect to the application for each applicant; and
 3. a general description of the activity.
 - (b) The applicants shall jointly post public notice in newspapers of general circulation covering the proposed area to be served.
 1. The format shall be in a manner prescribed by the Department.
 2. The notice shall be for one day only.

(Rule 0940-3-10-.03, continued)

- (c) The applicant shall be responsible for all cost of public notices.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302(a)(3), 33-1-304, 33-1-305(1), 33-1-309, 33-2-101, and 33-2-701, et seq. **Administrative History:** Original rule filed June 29, 2004; effective September 12, 2004.

0940-3-10-.04 COMMENTS AND PUBLIC HEARING.

- (1) Any intervenor shall have standing under Tennessee Code Annotated, Title 4, Chapter 5.
- (2) Any intervenor may provide written comments to the Department, or the other department or agency conducting the review, regarding the activity proposed in the public notice required by rule 0940-3-10-.03(4) by mailing such comments within fifteen (15) days after the notice's publication date, in the State Register (TAR).
- (3) A public hearing may be held at the discretion of the Department or after receiving a written request by an intervenor or an applicant within thirty (30) days after the notice's publication date, in the State Register (TAR).
- (4) The public hearing may be held for the purpose of gathering information pertinent to the issues listed in rule 0940-3-10-.03(2)(f, g) or any portion of the Act.
- (5) Notice of the public hearing shall be provided as follows:
 - (a) The person(s) requesting the hearing shall submit a proposed state register notice for approval by the Department. The Department shall amend the notice, if necessary, to provide sufficient or accurate information. The notice shall be published in the Tennessee Administrative Register at least thirty (30) days prior to the hearing.
 - (b) The person(s) requesting the hearing may publish an advertisement in a newspaper of general circulation at least five (5) working days prior to the public hearing.
 - (c) The person(s) requesting the hearing shall provide notice to known applicants and intervenors by telephone, fax, or electronic mail and letter timed so that the notice shall be received at least five (5) working days before the hearing.
- (6) The hearing shall be conducted pursuant to the applicable sections of the Uniform Administrative Procedures Act, T.C.A., Title 4, Part 5. An initial decision shall be rendered no later than forty-five (45) days from the final date of the hearing, unless the time period is tolled pursuant to Rule 0940-3-10-.05 below; by agreement of the parties; or by order of a court of competent jurisdiction.
- (7) The initial decision shall become final within fifteen (15) days of rendering of the initial decision unless the Department receives a written request for reconsideration prior to the close of business of the fifteenth (15th) day. Upon timely receipt of the request for reconsideration the Commissioner shall review the record of the hearing and render a decision within fifteen (15) business days of receipt of the request. The Commissioner's decision shall be a final decision of the Department.
- (8) A party aggrieved by a final decision may seek judicial review pursuant to the applicable sections of the Uniform Administrative Procedures Act, T.C.A., Title 4, Part 5.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302(a)(3), 33-1-304, 33-1-305(1), 33-1-309, 33-2-101, and 33-2-701, et seq. **Administrative History:** Original rule filed June 29, 2004; effective September 12, 2004.

0940-3-10-.05 REVIEW AND FINDINGS.

- (1) The Department shall consult with the Attorney General regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement.
 - (a) The Attorney General may consult with the United States Department of Justice or the Federal Trade Commission regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement.
 - (b) If the Attorney General and Reporter, after consultation with the Department, determines it is necessary to consult with the United States Department of Justice or the Federal Trade Commission, or determines that further information is needed to review the application, the Department may, upon written notice to the applicant, Attorney General and Reporter, and any intervenor, extend its review of the application an additional forty-five (45) days.
- (2) The Department shall grant or deny an application within sixty (60) days of the date of filing of the application. This time period shall be tolled upon issuance of a notice to hold an application hearing until completion of the hearing. The time period may also be tolled if the Department determines that additional time is needed to review the application. Upon written notice to the applicants, the Attorney General and Reporter, and any intervenor, the Department may extend the time for review for a period of thirty (30) days, which, at the discretion of the commissioner, may be extended for an additional thirty (30) days.
- (3) Prior to making an application the parties may submit an initial filing to the Department.
 - (a) The initial filing shall be filed at least forty-five (45) days prior to the filing of the application.
 - (b) The initial filing shall include the following:
 1. Summarize the proposed agreement;
 2. Describe the geographic market area; and
 3. Include those factors described in 0940-3-10-.03(2)(f) and (g).
 - (c) The Department shall review the initial filing within thirty (30) days of its receipt and inform the parties of any deficiency along with a proposed remedy to correct these deficiencies.
 - (d) Review of an initial filing by the Department does not constitute approval of the final application.
- (4) The Department shall issue a COPA if it determines that the likely benefits outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. This determination shall be made by considering the following:
 - (a) the potential benefits of the cooperative agreement including but not limited to those listed in rule 0940-3-10-.03(2)(f);
 - (b) the potential disadvantages of the agreement attributable to any reduction in competition likely to result from the cooperative agreement, including but not limited to those listed in rule 0940-3-10-.03(2)(g); and
 - (c) The evaluation done by the Attorney General of any potential reduction in competition resulting from the agreement.

(Rule 0940-3-10-.05, continued)

- (5) Upon making the determination to grant or deny an application, the Department shall send a copy of the decision notice to the applicants, the Attorney General, and any intervenor.
- (6) If the Department determines at any time that the likely benefits resulting from a cooperative agreement do not outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the Department shall notify the applicant(s) that the agreement is invalid and has no further force or effect.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302(a)(3), 33-1-304, 33-1-305(1), 33-1-309, 33-2-101, and 33-2-701, et seq. **Administrative History:** Original rule filed June 29, 2004; effective September 12, 2004.

0940-3-10-.06 REGULATION AND SUPERVISION.

- (1) Each COPA, and every party thereto, shall be subject to the active regulation of and supervision by the Department with respect to the activity or activities contemplated under the COPA.
 - (a) Active regulation and supervision of the COPA and the parties thereto shall include, but not be limited to, an inspection (one of which may be unannounced) and review at least twice annually of the following materials and matters:
 1. all records, correspondence, documents or other material of the parties to the COPA regarding development and maintenance of the COPA;
 2. all records, correspondence, documents or other material of the parties to the COPA addressing the continued benefits or potential disadvantages of continuation of the COPA;
 3. any other matter deemed relevant by the Department to the continued operation of the COPA and its cooperative agreements.
- (2) The Department shall maintain on file all cooperative agreements for which a COPA remains in effect.
- (3) All certificate holders must annually reapply for a COPA as follows:
 - (a) Parties to a cooperative agreement shall jointly submit a single renewal application on behalf of all parties to a single cooperative agreement.
 - (b) The original and two copies of the renewal application must be submitted to the Department or the department or other agency that conducted the review;
 - (c) The renewal application shall be accompanied by the Department's renewal form on which the certificate holder shall indicate its compliance with the requirements of rule 0940-3-10-.03(2). The certificate holder shall also address and describe any material changes in the implementation or operation of the cooperative agreement, and must address any changes in competition in the relevant market bearing on the cooperative agreement; and
 - (d) Submit a renewal fee equal to that of the initial application fee.
- (4) If the Department determines that the COPA continues to comply with the standards listed in rule 0940-3-10-.05(4), the Department shall renew the COPA. If the Department determines that the disadvantages attributable to the COPA outweigh its likely benefits, the COPA is invalid, with no further force or effect. The Department shall give fourteen (14) days notice of its termination of the COPA under this section. The COPA shall be rendered invalid at 12:01 a.m. on the 15th day.

(Rule 0940-3-10-.06, continued)

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302(a)(3), 33-1-304, 33-1-305(1), 33-1-309, 33-2-101, and 33-2-701, et seq. **Administrative History:** Original rule filed June 29, 2004; effective September 12, 2004.

0940-3-10-.07 TERMINATION OF THE COPA BY CERTIFICATE HOLDERS.

Any party to a cooperative agreement that terminates the agreement shall file a notice of termination with the Department. Upon the consent of all certificate holders, certificate holders may voluntarily terminate a COPA by promptly giving joint written notice to the Department.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302(a)(3), 33-1-304, 33-1-305(1), 33-1-309, 33-2-101, and 33-2-701, et seq. **Administrative History:** Original rule filed June 29, 2004; effective September 12, 2004.