

**RULES  
OF  
THE TENNESSEE DEPARTMENT OF HEALTH  
DIVISION OF HEALTH PLANNING**

**CHAPTER 1200-38-01  
HOSPITAL COOPERATION ACT OF 1993**

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**1200-38-01-.01 PURPOSE AND DEFINITIONS.**

The rules in this chapter implement the law relative to Cooperative Agreements and the granting of Certificates of Public Advantage pursuant to the Hospital Cooperation Act of 1993, T.C.A. §§ 68-11-1301 through 68-11-1309.

Pursuant to the Act, the Department is responsible for active state supervision to protect the public interest and to assure that the reduction in competition of health care and related services continues to be outweighed by clear and convincing evidence of the likely benefits of the Cooperative Agreement, including but not limited to improvements to population health, access to services and economic advantages to the public. The COPA will be denied or terminated if the likely benefits of the Cooperative Agreement fail to outweigh any disadvantages attributable to a potential reduction in competition resulting from the Cooperative Agreement by clear and convincing evidence.

- (1) "Advisory Group" means the group of stakeholders from Applicants geographic service area, as specified in the Application, appointed by the Commissioner, in consultation with appropriate constituencies and government agencies, to recommend Measures to be considered for inclusion in an Index to objectively track Public Advantage of a single Cooperative Agreement.
- (2) "Applicant" means the parties to a Cooperative Agreement who submit an Application to the Department in accordance with 1200-38-01.02.
- (3) "Application" means the written materials submitted to the Department in accordance with 1200-38-01.02, by entities who desire to apply for a Certificate of Public Advantage.
- (4) "Attorney General" means the Attorney General and Reporter for the State of Tennessee.
- (5) "Certificate of Public Advantage ("COPA" or the "Certificate")" means the written approval by the Department which governs the Cooperative Agreement.
- (6) "Certificate Holder" means the entity holding the Certificate of Public Advantage issued by the Department.
- (7) "Commissioner" means the Commissioner of the Department of Health.
- (8) "Cooperative Agreement" means an agreement among two (2) or more hospitals for the consolidation by merger or other combination of assets, offering, provision, operation, planning, funding, pricing, contracting, utilization review or management of health services or for the sharing, allocation or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic or laboratory facilities or procedures or other

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services traditionally offered by hospitals, including any parent or subsidiary at the time the transaction occurs or at any time thereafter.

- (9) "Department" means the Department of Health.
- (10) "Hospital" means an institution required to be licensed as a hospital pursuant to § 68-11-201, or defined as a psychiatric hospital in § 68-11-102; or any parent of a hospital, hospital subsidiary or hospital affiliate that provides medical or medically-related diagnostic and laboratory services or engages in ancillary activities supporting those services.
- (11) "Independent Provider" means a licensed provider in private practice and not employed by any Applicant providing medical services to patients residing or working in the Applicants' geographic service area.
- (12) "Index" means a set of Measures used to objectively track the progress of a Cooperative Agreement over time to ensure Public Advantage. The components of the Index may be assigned differential weightings and modified from time to time as determined by the Department.
- (13) "Intervenor" means any hospital, physician, allied health professional, healthcare provider or other person furnishing goods or services to, or in competition with, hospitals, insurer, hospital service corporation, medical service corporation, hospital and medical services corporation, preferred provider organization, health maintenance organization or any employer or association that directly or indirectly provides health care benefits to its employees or members.
- (14) "Measure" means some number of factors or benchmarks, which may be binary, a range or continuous factors.
- (15) "Plan of Separation" means the written proposal submitted with an Application to return the parties to a Cooperative Agreement to a pre-consolidation state, which includes a plan for separation of any combined assets, offering, provision, operation, planning, funding, pricing, contracting, utilization review or management of health services or any combined sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic or laboratory facilities or procedures or other services traditionally offered by hospitals, including any parent or subsidiary at the time the consolidation occurs or thereafter.
- (16) "Population" means the entirety of the human population residing or domiciled in the geographic service area set out in the proposed Cooperative Agreement unless otherwise defined.
- (17) "Public Advantage" means the likely benefits accruing from a Cooperative Agreement which outweigh, by clear and convincing evidence, the likely disadvantages attributable to a reduction in competition likely to result from the Cooperative Agreement.

**Authority:** T.C.A. §§ 68-11-1301 through 68-11-1309. **Administrative History:** Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016. Amendments filed December 10, 2018; effective March 10, 2019.

#### **1200-38-01-.02 APPLICATION PROCESS.**

- (1) Letter of Intent. At least forty-five (45) days prior to filing an Application, the parties to the proposed Cooperative Agreement shall file a letter of intent.
  - (a) Contents. A letter of intent shall contain the following:

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1. A brief description of the proposed Cooperative Agreement, including the location of the entities and parties to the Cooperative Agreement;
  2. A list that includes all assets, ownership interests, subsidiaries and affiliated businesses currently owned or operated, in whole or in part, by any party to the Cooperative Agreement that the parties propose to be included in the COPA or any assets, ownership interests, subsidiaries and affiliated businesses currently owned or operated, in whole or part, by any party to the Cooperative Agreement that will be divested, sold or affected as a result of the Cooperative Agreement;
  3. A list of all business interests or units for which each party to the Cooperative Agreement has any ownership interest or a management contract that is not proposed to be included in the Cooperative Agreement;
  4. The name, address and contact information of the parties to the proposed Cooperative Agreement including the executive officers, each party's respective board members and each party's general counsel;
  5. A description of the entities' governing structure under the Cooperative Agreement;
  6. The anticipated date of submission of the Application; and the anticipated effective date of the proposed Cooperative Agreement; and
  7. The geographic service area and Population covered by the Cooperative Agreement.
- (b) Amendment. The parties shall amend the letter of intent if material changes occur prior to submission of the parties' Application.
- (c) Expiration. A letter of intent expires six (6) months after the date of receipt by the Department, if no Application was timely filed with the Department.
- (d) Public Record. The Department shall post letters of intent on the Department's website until an Application is filed or until the letter of intent expires.
- (2) Application.
- (a) Parties seeking a COPA shall apply to the Department in writing. Parties shall submit the following information in the Application:
1. A descriptive title;
  2. A table of contents;
  3. An executive summary which includes:
    - (i) Goals for change to be achieved by the Cooperative Agreement;
    - (ii) Benefits and advantages to parties and the public including but not limited to:
      - (I) Population health;
      - (II) Access to health care and prevention services; and

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- (III) Healthcare operating costs, including avoidance of capital expenditures, and reduction in operating expenditures that will result in lower costs for the parties and to the public; and
  - (IV) Improvements in patient outcomes.
- (iii) Description of how the Cooperative Agreement better prepares and positions the parties to address anticipated future changes in health care financing, organization and accountability initiatives; and
- (iv) Potential disadvantages of the Cooperative Agreement, including but not limited to:
  - (I) Closure or consolidation of programs and facilities and the potential impact on access to services;
  - (II) Reducing selected administrative and clinical functions and loss of jobs;
  - (III) Narrowing of traditional payer networks leading to reduction of patient choice in choosing physicians and other services; and
  - (IV) Negative impact on Independent Providers due to the anticipated increased market concentration in physician and health care services controlled by the Applicants.
- 4. The names of each party to the Application and the address of the principal business office of each party;
- 5. A verified statement signed by the Chairperson of the Board of Directors and Chief Executive Officer of each party to the Application; or, if one or more of the Applicants is an individual, signed by the individual Applicant; attesting to the accuracy and completeness of the enclosed information;
- 6. A description of the prior history of dealings between the parties to the Application, including, but not limited to, their relationship as competitors and any prior joint ventures or other collaborative arrangements between the parties. If the parties have engaged in prior joint ventures, the parties should describe why they believe such efforts would not be successful in achieving the goals they seek through a Cooperative Agreement. If the parties have not engaged in any joint ventures or collaborative arrangements, the parties should describe why alternative arrangements were not attempted to achieve the goals they seek through a Cooperative Agreement;
- 7. A detailed description of the proposed geographic service area, not limited to the boundaries of the State of Tennessee. If the proposed geographic service area differs from the geographic service areas where the parties have conducted business over the five (5) years preceding the Application, a description of how and why the proposed geographic service area differs and why changes are proposed;
- 8. Identification of whether any services or products of the proposed Cooperative Agreement are currently being offered or capable of being offered by other providers or purchasers in the geographic service area described in the Application;

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9. Explanation of how the Cooperative Agreement will assure continued competitive and independent operation of the services or products of entities not a party to the Cooperative Agreement, including the potential for new entry;
10. A statement of whether there will be a Public Advantage or adverse impact on population health, quality, access, availability or cost of health care to patients and payers as a result of the Cooperative Agreement;
11. A statement of whether the projected levels of cost, access to health care or quality of health care could be achieved in the existing market without the granting of a COPA; and, for each of the above, an explanation of why or why not;
12. A report used for public information and education that is documented to have been disseminated prior to submission of the Application and submitted as part of the Application. The report must include the following:
  - (i) A description of the proposed geographic service area, services and facilities to be included in the Cooperative Agreement;
  - (ii) A description of how health services will change if the Application is accepted;
  - (iii) A description of improvements in patient access to health care including prevention services for all categories of payers and advantages patients will experience across the entire geographic service area regarding costs, availability or accessibility upon initiation of the Cooperative Agreement and/or findings from studies conducted by hospitals and other external entities, including health economists, clinical services and population health experts, that describe how proposed Cooperative Agreement plans are: effective with respect to resource allocation implications; efficient with respect to fostering cost containment, including, but not limited to, eliminating duplicate services and future service and facility plans; and equitable with respect to maintaining quality and competition in health services within the geographic service area, assuring patient access to and choice of insurers and providers within the health care system;
  - (iv) Findings from geographic service area assessments that describe major health issues and trends, specific population health disparities and comparisons to state and other similar regional areas proposed to be addressed;
  - (v) Impact on the health professions workforce including long-term employment and wage levels and recruitment and retention of health professionals; and
  - (vi) A record of community stakeholder and consumer views of the proposed Cooperative Agreement collected through a public participatory process including meetings and correspondence in which this report or its components were used. Applicants should also provide a summary of the number and location of events organized by the Applicants; number of speakers; the name, title, and affiliated organization of the speakers and whether the speaker is speaking on behalf of the organization or in the speaker's personal capacity; and communications used by the Applicants to maximize public involvement in the process. Transcripts or minutes of

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any meetings held during these public forums shall be included in the report.

13. A signed copy of the Cooperative Agreement, including:
  - (i) A description of any consideration passing to any person under the Cooperative Agreement including the amount, nature, source and recipient;
  - (ii) A detailed description of any merger, lease, change of control or other acquisition or change in ownership of the assets of any party to the Cooperative Agreement;
  - (iii) A list of all services and products and all service locations that are the subject of the Cooperative Agreement, including those not occurring within the boundaries of the State of Tennessee, and including, but not limited to, hospitals or other inpatient facilities, insurance products, physician practices, pharmacies, accountable care organizations, psychiatric facilities, nursing homes, physical therapy and rehabilitation units, home care agencies, wellness centers or services, surgical centers or services, dialysis centers or services, cancer centers or services, imaging centers or services, support services or any other product, facility or service;
  - (iv) A description of each party's contribution of capital, equipment, labor, services or other value to the transaction;
  - (v) A description of the competitive environment in the parties' geographic service area, including:
    - (I) Identification of all services and products likely to be affected by the Cooperative Agreement and the locations of the affected services and products;
    - (II) The parties' estimate of their current market shares for services and products and the projected market shares if the COPA is granted;
    - (III) A statement of how competition among health care providers or health care facilities will be reduced for the services and products included in the Cooperative Agreement; and
    - (IV) A statement regarding the requirement(s) for any Certificate(s) of Need resulting from the Cooperative Agreement.
  - (vi) Impact on the geographic service area's health care industry workforce, including long-term employment and wage levels and recruitment and retention of health professionals;
  - (vii) Description of financial performance, including:
    - (I) A description and summary of all aspects of the financial performance of each party to the transaction for the preceding five (5) years including debt, bond rating and debt service and copies of external certified public accountants annual reports;

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- (II) A copy of the current annual budget for each party to the Cooperative Agreement and a three (3) year projected budget for all parties after the initiation of the Cooperative Agreement. The budgets must be in sufficient detail so as to determine the fiscal impact of the Cooperative Agreement on each party. The budgets must be prepared in conformity with generally accepted accounting principles (GAAP) and all assumptions used must be documented;
- (III) A detailed explanation of the projected effects including expected change in volume, price and revenue as a result of the Cooperative Agreement, including;
  - I. Identification of all insurance contracts and payer agreements in place at the time of the Application and description of pending or anticipated changes that would require or enable the parties to amend their current insurance and payer agreements;
  - II. A description of how pricing for provider insurance contracts are calculated and the financial advantages or disadvantages impacting insurers, insured consumers and the parties of the Cooperative Agreement (including the Applicants' employed and contracted physicians, if any) if the COPA is granted including changes in percentage of risk-bearing contracts;
  - III. The following policies:
    - A. Policy that assures no restrictions to Medicare and/or Medicaid patients,
    - B. Policies for free or reduced fee care for uninsured and indigent,
    - C. Policies for bad debt write-off; and
    - D. Policies that assure parties to the Cooperative Agreement will maintain or exceed existing level of charitable programs and services.
- (IV) Identification of existing or future business plans, reports, studies or other documents of each party that:
  - I. Discuss each party's projected performance in the market, business strategies, capital investment plans, competitive analyses and financial projections including any documents prepared in anticipation of the Cooperative Agreement; and
  - II. Identification of plans that will be altered, eliminated or combined under the Cooperative Agreement or subsequent COPA
- (viii) A description of the plan to systematically integrate health care and preventive services among the parties of the Cooperative Agreement, in the proposed geographic service area, to address the following:

(Rule 1200-38-01-.02, continued)

- (I) A streamlined management structure to include a description of a single board of directors, centralized leadership and operating structure;
  - (II) Alignment of the care delivery decisions of the system with the interest of the community;
  - (III) Clinical standardization;
  - (IV) Alignment of cultural identities of the parties to the Cooperative Agreement;
  - (V) Implementation of risk-based payment models to include risk, a schedule of risk assumption and proposed performance metrics to demonstrate movement toward risk assumption and a proposed global spending cap for hospital services; and
  - (VI) Collaboration with Independent Providers in the geographic service area.
- (ix) A detailed description of each of the benefits the Applicants propose will be achieved through the Cooperative Agreement, and for each benefit described provide:
- (I) A description specifically describing how the Applicants intend to achieve the benefit;
  - (II) A description of what the parties have done in the past with respect to achieving or attempting to achieve the benefits independently or through collaboration;
  - (III) An explanation of why the benefit can best be achieved through a Cooperative Agreement and not through other less anticompetitive arrangements;
  - (IV) A description of how the Applicants propose that the Commissioner measure and monitor achievement of the proposed benefit including:
    - I. Proposed measures and suggested baseline values with rationale for each measure to be considered by the Commissioner in developing a plan to monitor achievement of the benefit;
    - II. The projected levels and trajectory for each measure that would be achieved over the next five (5) years in the absence of the Cooperative Agreement.
    - III. The basis for the metrics proposed to measure the benefits; and
    - IV. A plan for how the requisite data for assessing the benefit will be identified and obtained.
- (x) A description of the plan, including economic metrics, that details anticipated efficiencies in operational costs and shared services to be gained through the Cooperative Agreement including:

(Rule 1200-38-01-.02, continued)

- (I) Proposed use of any cost savings to reduce prices borne by insurers and consumers;
  - (II) Proposed use of cost savings to fund low or no-cost services such as immunizations, mammograms, chronic disease management and drug and alcohol abuse services to achieve long-term population health improvements; and
  - (III) Other proposed uses of savings to benefit advancement of health and quality of care and outcomes.
- (xi) Proposed Measures and suggested baseline values with rationale for each Measure to be considered by the Department in development of an Index. Proposed Measures are to be used to continuously evaluate the Public Advantage of the results of actions approved in the COPA through the Cooperative Agreements under active supervision of the Department. Measures should include elements that reflect both the anticipated benefits and potential disadvantages if the COPA is approved, including measures detailed in item (2)(a)13.(ix)(IV) of this rule. They should include source and projected trajectory over each of the first five (5) years of the Cooperative Agreement and the trajectory if the COPA is not granted. Proposed Measures may include:
- (I) Improvements in the geographic service area population's health that exceed Measures of national and state improvement;
  - (II) Continuity in availability of services throughout the geographic service area;
  - (III) Access and use of preventive and treatment health care services throughout the geographic service area;
  - (IV) Operational savings projected to lower health care costs to payers and consumers; and
  - (V) Improvements in quality of services as defined by surveys of the Joint Commission.
14. An explanation of the reasons for the exclusion of any information set forth in section 1200-38-01-.02, the Application Process, including an explanation of why the item is not applicable to the Cooperative Agreement or to the parties;
15. A detailed description of the total cost resulting from the Cooperative Agreement, including, but not limited to, new costs for consultants, capital costs and management costs. The description should identify costs associated with the implementation of the Cooperative Agreement, including documentation of the availability of the necessary funds. The description should identify which costs are borne by each party;
16. A timetable for implementing all components of the Cooperative Agreement;
17. The Department shall require a Plan of Separation be submitted with the Application. The Plan of Separation shall be updated annually by the parties to the Cooperative Agreement. The parties shall provide an independent opinion from a qualified organization verifying the Plan of Separation can be

(Rule 1200-38-01-.02, continued)

operationally implemented without undue disruption to essential health services provided by the parties; and

18. The name, address and telephone number of the person(s) authorized to receive notices, reports and communications with respect to the Application.

(3) Additional Department Requirements.

- (a) The Department may request additional information from the parties prior to deeming the Application complete or issuing a final decision. The Application shall not be deemed complete nor shall the one hundred twenty (120) day review period commence until all information is received by the Department.
- (b) The Department shall notify the parties in writing when the Application is deemed complete.
- (c) The parties shall submit simultaneously a copy of the Application and copies of all additional related materials to the Attorney General and to the Department. The Department is entrusted with the active and continuing oversight of all Cooperative Agreements.
- (d) The Department may waive any of the requirements or timeframes that it finds, at its sole discretion, due to the nature of a particular Cooperative Agreement, are inapplicable to its analysis of the Cooperative Agreement.
- (e) The Application and accompanying documents are public records pursuant to T.C.A. § 10-7-503 and are subject to public inspection in accordance with § 10-7-503, except for records which are confidential pursuant to state or federal law. The parties shall specify any portion of the Application which the parties contend is exempt from the Public Records Act. The parties shall include the specific authority for said exemption. Applicants shall submit two (2) copies of the Application. The first copy shall include all requested information. The second copy shall contain all requested information; however, the parties shall redact confidential information wherever possible. Nothing in this subsection shall limit or deny access to otherwise public information because an Application or accompanying document contains confidential information.

**Authority:** T.C.A. § 68-11-1303. **Administrative History:** Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016. Amendments filed December 10, 2018; effective March 10, 2019.

**1200-38-01-.03 TERMS OF CERTIFICATION.** All COPAs shall be governed by terms of certification. The terms of certification shall include:

(1) Charges.

- (a) Parties to a Cooperative Agreement who have applied to the Department for a COPA shall pay all charges incurred in the examination of the Application and, in the event the COPA is approved, all charges incurred for the review and ongoing supervision of the Cooperative Agreement, including all expenses of the Department, including, but not limited to, experts and examiners employed in the review and ongoing supervision of the Application and COPA.
- (b) The compensation of the Department, experts and examiners designated by the Commissioner for examining the Cooperative Agreement and all records shall be fixed by the Commissioner at an amount commensurate with usual compensation for like services.

(Rule 1200-38-01-.03, continued)

- (c) The Department shall develop a formula to include charges incurred in the examination of the Application and charges incurred for review and ongoing supervision and invoice COPA Applicants and holders Department's costs at a regular interval.
- (2) Evaluation of the Application by the Department that demonstrates Public Advantage in accordance with the standards set forth in these rules.
  - (a) Benefits to include:
    - 1. Enhancement of the quality of Hospital and hospital-related care provided to Tennessee citizens;
    - 2. Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities;
    - 3. Gains in the cost containment and cost-efficiency of services provided by the Hospitals involved;
    - 4. Improvements in the utilization of Hospital resources and equipment;
    - 5. Avoidance of duplication of Hospital resources;
    - 6. Demonstration of population health improvement of the region served according to criteria set forth in the Cooperative Agreement and approved by the Department;
    - 7. The extent to which medically underserved populations have access to and are projected to utilize the proposed services; and
    - 8. Any other benefits that may be identified.
  - (b) Disadvantages to include:
    - 1. The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other healthcare payers to negotiate appropriate payment and service arrangements with Hospitals, physicians, allied healthcare professionals or other healthcare providers;
    - 2. The extent of any reduction in competition among physicians, allied health professionals, other healthcare providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the Cooperative Agreement;
    - 3. The extent of any likely adverse impact on (i) patients in the quality and availability of healthcare services and (ii) patients and payers in the price of healthcare 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 Cooperative Agreement.
- (3) Ongoing Supervision through the use of an Index tracking demonstration of Public Advantage.

(Rule 1200-38-01-.03, continued)

- (a) An Index will be created and used for the Department to evaluate the proposed and continuing Public Advantage of the COPA,
- (b) The Index will include measures of the cognizable benefits and disadvantages in the following categories:
  - 1. Population Health;
  - 2. Access to Health Services;
  - 3. Economic; and
  - 4. Other Cognizable Benefits.
- (c) Each category may be comprised of Measures for subcategories of the Index which shall be recommended separately by the Advisory Group and the parties to the Cooperative Agreement for the COPA. The Department retains exclusive authority to add to, modify, or to accept or reject recommendations when creating the Index.
- (d) The Department shall establish a baseline score at the outset of the Index composition to allow for the future demonstration of a Public Advantage. Subsequently, established ranges for the score should demonstrate whether:
  - 1. Advantage is clear and convincing; the COPA continues in effect,
  - 2. Advantage is not clear and convincing; a modification to the Cooperative Agreement under the terms of certification will be necessary,
  - 3. Advantage is not evident; COPA is terminated.
- (e) Advisory Group
  - 1. Recommendations. The Advisory Group shall recommend to the Commissioner Measures to be considered for inclusion in an Index to objectively track the Public Advantage of a Cooperative Agreement.
  - 2. Meetings. The Advisory Group shall hold at least four (4) meetings with stakeholders to obtain community input and comment, with guidance from the Department.
    - (i) All meetings shall be open in accordance with T.C.A. §§ 8-44-101 through 8-44-111.
    - (ii) One (1) meeting shall provide for comment from internal stakeholders, such as persons employed by or agents of the parties to the Cooperative Agreement, its affiliates, contractors or vendors, staff clinicians or other persons deriving income from their activities with any of the parties to the Cooperative Agreement.
    - (iii) One (1) meeting shall provide for comment from external stakeholders, such as competing health care providers, non-staff clinicians, payers including self-insured employers, governmental agencies, non-governmental agencies, and other parties who derive income from health or health care services or are who are not employed or affiliated with and do not derive income from the parties to the Cooperative Agreement.

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- (iv) One (1) meeting shall provide for comment from other members of the community not represented in the internal or external stakeholder groups, including, current or potential patients, customers or other entities who are not affiliated, competing with or otherwise contracting with the parties to the Cooperative Agreement.
- (v) The final meeting shall be open to all persons expressing an interest in the Cooperative Agreement and shall be held following the completion of the Advisory Group's recommendation of Measures to be considered for inclusion in the Index.
- (vi) The Advisory Group, in consultation and with the approval of the Department, may elect to alter the number and composition of the meetings previously described.
- (vii) The Department may provide guidance to the Advisory Group.

### 3. Completion of Duties.

- (i) The Advisory Group's service shall conclude when the Department receives the Advisory Group's recommendation of Measures proposed for inclusion in the Index.
  - (ii) The Commissioner shall have the authority to convene, change the composition of, dismiss and reconvene the Advisory Group if necessary.
- (4) A commitment to pass on or reinvest a portion of cost savings and efficiencies gained through the Cooperative Agreement to the citizens in the affected geographic service area.
  - (5) Additional conditions of reporting and operations determined by the Department to demonstrate Public Advantage.

**Authority:** T.C.A. §§ 68-11-1303 and 68-11-1307. **Administrative History:** Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016. Amendments filed December 10, 2018; effective March 10, 2019.

### 1200-38-01-.04 NOTICE AND HEARING.

- (1) Prior to acting on an Application for a Certificate, the Department shall hold at least one (1) public hearing which will afford the right to any interested parties to express their views regarding an Application, and may gather additional feedback through other means from the community as needed.
- (2) The Department shall give notice of the completed Application to interested parties by publishing a notice in the Tennessee administrative register in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, title 4, chapter 5. The notice shall include a brief summary of the requested action, how to access the Application and information concerning the time and place of the public hearing. The notice shall be published at least fifty (50) days prior to the date set for the public hearing.

**Authority:** T.C.A. § 68-11-1303. **Administrative History:** Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016.

**1200-38-01-.05 ISSUANCE AND MAINTENANCE OF COPA.**

- (1) After consultation with and agreement from the Attorney General, the Department shall issue a Certificate for a Cooperative Agreement if it determines the Applicants have demonstrated by clear and convincing evidence 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.
- (2) The Department shall grant or deny the Application within one hundred twenty (120) days of the date of filing of the Application. An Application shall not be deemed filed until the Application is complete. The Department shall act promptly to determine whether the Application is complete and may request additional documents or information from the Applicants necessary to make the Application complete. The Department's decision as to whether the Application should be granted or denied shall be in writing and set forth the basis for the decision. The Department shall furnish a copy of the decision to the Applicants, the Attorney General and any Intervenor. Prior to granting the COPA, the parties and Department will agree upon terms of certification and specific conditions that assure Public Advantage.
- (3) The Department shall maintain on file all effective COPAs.

**Authority:** T.C.A. §§ 68-11-1301 and 68-11-1303. **Administrative History:** Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016.

**1200-38-01-.06 ACTIVE SUPERVISION BY TERMS OF CERTIFICATION.**

- (1) The Department shall maintain active supervision in accordance with the terms of certification described in 1200-38-01-.03. The Department shall not be bound by measures, indices or other conditions found outside of the COPA.
- (2) Periodic Reports. The Department shall maintain active supervision in addition to requesting COPA holders to submit periodic reports to the Department in a format determined by the Department. The periodic reports shall be filed with the Department on January 1 and July 1 (or the following business day) each year. The reports should include the name, address, telephone number and other contact information for the party responsible for completing future reports who may be contacted by the Department to monitor the implementation of the Cooperative Agreement.
- (3) Update Plan of Separation. The parties to the Cooperative Agreement shall update the parties' Plan of Separation annually and submit the updated Plan of Separation to the Department. The parties shall provide an independent opinion from a qualified organization which states the Plan of Separation can be operationally implemented without undue disruption to essential health services provided by the parties.
- (4) Modification of Index. The Department retains the right to modify any Measure, Index or condition under the COPA at any time.
- (5) The Department shall conduct a public hearing in the geographic service area where a COPA is in effect at least once every three (3) years to afford the public the opportunity to express their views regarding the operation of the Cooperative Agreement.
- (6) Departmental Review. At least annually, the Department shall review such documents necessary to determine compliance with the terms of the COPA and calculate the Index. In addition to any required documents, the parties shall provide the Department with the most recent verifiable values available for those Measures that are included in the Index (except any Measures or factors which the Department itself regularly generates, receives or holds).

(Rule 1200-38-01-.06, continued).

The Department reserves the right to request supplemental information when needed, as determined by the Department.

- (7) A Department representative may make periodic onsite inspections of the Certificate Holder's locations as necessary in regard to compliance with COPA.
- (8) Parties to the COPA must timely pay all applicable fees and invoices for initiation and maintenance of the COPA.
- (9) The Department shall make public and in writing its determinations of compliance, and the Index score and trends.
- (10) Failure to meet any of the terms of the COPA shall result in termination or modification of the COPA.

**Authority:** T.C.A. § 68-11-1303. **Administrative History:** Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016. Amendments filed December 10, 2018; effective March 10, 2019.

#### **1200-38-01-.07 MODIFICATION/TERMINATION/ENFORCEMENT.**

- (1) If the Department determines that the benefits no longer outweigh the disadvantages by clear and convincing evidence, the Department may first seek modification of the Cooperative Agreement with the consent of the parties.
- (2) If modification is not obtained, the Department may terminate the COPA by written notice to the Certificate Holder and the Certificate Holder may appeal in the same manner as if the COPA were denied.
- (3) The COPA shall remain in effect until such time as the Certificate Holder has submitted, the Department has approved and the Certificate Holder has completed the Plan of Separation.
- (4) Voluntary Termination. The Certificate Holder shall notify the Department forty-five (45) days prior to voluntary termination of the Cooperative Agreement.

**Authority:** T.C.A. §§ 68-11-1303 and 68-11-1306. **Administrative History:** Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016. Amendments filed December 10, 2018; effective March 10, 2019.

#### **1200-38-01-.08 HEARING AND APPEALS.**

- (1) Applicant or Certificate Holder. Any Applicant or Certificate Holder aggrieved by a decision of the Department denying an Application, refusing to act on an Application or terminating a Certificate is entitled to judicial review of the Department's decision by the chancery court of Davidson County, as specified in T.C.A. 68-11-1303.
- (2) Intervenor. An Intervenor aggrieved by a decision of the Department to grant or deny the Application shall have the right to appeal the Department's decision, except that there shall be no stay of the Department's decision granting an Application unless the chancery court of Davidson County shall have issued a stay of the Department's decision in accordance with § 68-11-1304, which shall be accompanied by an appeal bond from the Intervenor. If the Intervenor shall appeal the Department's decision and the appeal is unsuccessful, the Intervenor shall be responsible for the costs of the appeal and attorneys' fees of the Applicants.

(Rule 1200-38-01-.08, continued)

**Authority:** T.C.A. § 68-11-1303. **Administrative History:** Emergency rule filed July 14, 2015; effective through January 10, 2016. New rule filed October 6, 2015; effective January 4, 2016.