

## SETTLEMENT AGREEMENT

This Agreement ("Agreement") is made and entered into as of February 9, 2011 (the "Effective Date") by and among The Indiana Association of Residential Child Care Agencies, Inc. d/b/a IARCCA, an Association of Children and Family Services ("IARCCA"); the Indiana Department of Child Services ("DCS"); and James W. Payne, director, in his official capacity ("Payne") (DCS and Payne are referred to collectively as "DCS" or the "Defendants").

WHEREAS, IARCCA brought suit against DCS on December 14, 2009, which case DCS removed to federal court on December 23, 2009, and which case was consolidated with another and is pending as 1:09-cv-1574-SEB-MJD (the "Lawsuit"); and

WHEREAS, IARCCA claims in the Lawsuit that DCS and Payne had violated state and federal law by, among other things, failing to promulgate administrative rules for setting the rates paid to providers of services to abused, neglected and delinquent Indiana children ("the providers"), cutting those rates arbitrarily and without notice, failing to follow any established method concerning the setting of rates for providers, and violating 42 U.S.C. 1983 by acting under color of state law in violation of federal law; and

WHEREAS, the Court on January 26, 2010 published an Entry Granting a Preliminary Injunction, preliminarily enjoining DCS from, among other things, changing the rates paid to providers; and

WHEREAS, DCS has denied and continues to deny any wrongdoing, and appealed the preliminary injunction order in the U.S. Court of Appeals for the Seventh Circuit; and

WHEREAS, the Parties desire to settle the Lawsuit and all other controversies and differences between them.

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth herein, the Parties agree as follows:

1. **Rate Cut.** IARCCA's member providers have agreed to accept a decrease in the per diem rates that DCS pays to them for calendar year 2011, in the amount of 5% less than the rates currently paid (hereinafter referred to as the "2011 Rate"), subject to the following provisions:
  - a. With the exception of sections d. and e. below, no provider's 2011 Rate will be cut to an amount less than the IV-E rate established using the cost reports that providers submitted to DCS in Spring, 2010 ("the IV-E floor"). DCS reserves the right to conduct a desk audit on a provider's IV-E rate.
  - b. With the exception of sections d. and e. below, for any provider whose 2011 Rate is below the IV-E floor, DCS will increase their per diem payments to equal the IV-E floor.
  - c. The 5% rate cut applies to Private Secure Facility providers who are also Psychiatric Residential Treatment Facilities (PRTFs), but the DCS rate will not be reduced below the PRTF Medicaid rate of \$321.52.

- d. The rates paid to Child Placing Agencies ("CPAs") for children placed by the DCS local office in Marion County ("Marion County rates") will remain the same as those in effect at the time of this Agreement with no reduction. The rates paid to CPAs for children placed by the DCS local office in Lake County that are below the Marion County rates will be increased to equal the Marion County rates.
  - e. The rates paid to CPAs for children placed by the DCS local office in Lake County that are above the Marion County rates will have a 5% rate reduction but in no case will be lower than the Marion County rates. However, this provision (1(e)) applies to any CPA with rates higher than the standard Lake County level system rates, but does not apply to level 4 rates that have been negotiated for a specific child due to the child's extensive needs.
  - f. Beginning on January 1, 2012, the rates to the providers will be determined by new rules, as discussed in Section 2 below.
2. **New Rules.** DCS agrees to publish, and take any other steps necessary to ensure the enactment of, the administrative rules that are attached hereto as Exhibits A and B and incorporated into this Agreement (the "Rules") to govern the setting of rates for providers beginning in January 2012. DCS agrees not to amend or repeal the Rules, or otherwise to effect any significant changes in the rate-setting process that are inconsistent with the methodology in the Rules, without IARCCA's consent, until two (2) years from the date the Rules are enacted. DCS agrees to develop a Provider Manual that will incorporate the items listed in Exhibit C attached hereto.
  3. **Therapy for children placed with CPAs.** For new placements made on or after January 1, 2012, DCS shall refer therapy to the CPA as part of the placement for children in therapeutic and therapeutic plus categories, unless it is in the child's best interest to be referred to a different behavioral health provider.

For placements made before January 1, 2012 and remaining in placement on or after January 1, 2012, DCS shall refer to the existing therapist for continuity and consistency in therapeutic relationships unless it is in the child's best interests to be referred to a different behavioral health provider. If it is in the child's best interest to be referred to a different behavioral health provider, DCS will develop a transition plan in consultation with the CPA.

4. **Dismissal of Lawsuit.** IARCCA shall sign and forward to Defendants' counsel a Stipulation of Dismissal, within ten (10) business days after the effective date of this Agreement. The Stipulation of Dismissal shall stipulate that the parties agree and seek an order from the United States District Court for the Southern District of Indiana that:
  - a. Dismisses and releases all of IARCCA's claims against Defendants in the Lawsuit without prejudice including, without limitation, those claims made in paragraphs 13 through 38 of its Verified Complaint for Declaratory and Injunctive Relief filed on December 14, 2009, such that issues resolved by such order cannot be reopened,
  - b. Vacates the court's Order on Preliminary Injunction, and
  - c. Permits either party to enforce any breach of this Agreement or applicable law in this court, without having to exhaust administrative remedies, until thirty (30) days after the date the rates which are the subject of Rules (465 IAC 2-16 and 2-17) first go into effect, which is scheduled for January 1, 2012.

Defendants shall sign and file the Stipulation of Dismissal within ten (10) business days of receipt from IARCCA. If neither party files alleging a breach under paragraph (c) above within the applicable time frame, the parties shall sign and file a Stipulation of Dismissal with prejudice within ten (10) business days of the end of the time frame set out in paragraph (c) above.

5. **Attorneys' Fees and Costs.** DCS will pay to IARCCA the amount of \$198,750 as reimbursement for attorneys' fees incurred in connection with IARCCA's claims against the Defendants in the Lawsuit.
6. **Dismissal of Appeal.** DCS will dismiss the appeal that it filed in the Seventh Circuit Court of Appeals, within ten (10) business days after the effective date of this Agreement.
7. **Applicable Law.** This Agreement shall be construed, interpreted, governed, and enforced in accordance with the laws of the State of Indiana.
8. **Entire Agreement.** This Agreement constitutes the only existing and binding agreement of settlement among the Parties, and the Parties acknowledge that there are no other warranties, promises, assurances or representations of any kind, express or implied, upon which the Parties have relied in entering into this Agreement, unless expressly set forth herein. This Agreement shall not be modified except by written agreement signed by the party against whom modification is sought.
9. **Warranty.** Each party warrants (a) that the person executing this Agreement on its behalf has the authority to do so; and (b) that the matters being released pursuant to this Agreement have not been assigned or otherwise transferred to any other person or entity.
10. **Acknowledgment of Terms.** The Parties have read and understand the terms of this Agreement, have consulted with their respective counsel, and understand and acknowledge the significance and consequence of each such term.
11. **Representation by Counsel.** The Parties hereto agree that they enter into this Agreement after having received full advice from counsel of their choice with respect to this Agreement and all other matters related thereto.
12. **Execution of Documents.** This Agreement may be executed in counterparts, that is, all signatures need not appear on the same copy. All such executed copies shall together constitute the complete Agreement.
13. **Notices.** Notices to the parties under this Agreement will be to the following:


As to IARCCA: 5519 E. 82nd St. Suite A  
Indianapolis, IN 46250, Attn: Executive Director

As to Defendants: James W. Payne, Director  
Indiana Department of Child Services  
302 W. Washington St., E306-MS47  
Indianapolis, IN 46204

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date of the last signature herein.

Dated: 2-1-2011


IARCCA, an Association of Children and Family Services

By: 

Its: EXECUTIVE DIRECTOR

Dated: 2-2-2011

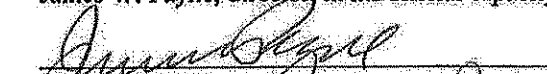
Indiana Department of Child Services

By: 

Its: DIRECTOR

Dated: 2-2-2011

James W. Payne, director, in his official capacity



Printed: JAMES W PAYNE

## Exhibit A

### Proposed Rule

LSA Document #10-416

### DIGEST

Adds 465 IAC 2-16, concerning residential treatment services providers licensed by the department as child caring institutions under IC 31-27-3, group homes under IC 31-27-5, and private secure facilities under 465 IAC 2-11, to establish the mechanisms the department will use for setting maintenance payments, administrative payments, and payments for other costs and services that may be made to residential treatment services providers. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

### **465 IAC 2-16**

SECTION 1. 465 IAC 2-16 IS ADDED TO READ AS FOLLOWS:

## **Rule 16. Rate Setting for Residential Treatment Services Providers**

### **465 IAC 2-16-1 Scope and purpose**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 1. (a) Every residential treatment services provider in the state of Indiana must be licensed by the department in accordance with state law in order for the department to recommend placement of a child with a residential treatment services provider or pay for the costs of such placement.**

**(b) This rule establishes the procedures the department will use for setting the payment rates, including, but not limited to, maintenance payments, administrative payments, and other costs described in this rule, and that will be paid to residential treatment**

**services providers for children placed by the department or a probation department.**

*(Department of Child Services; 465 IAC 2-16-1)*

## **465 IAC 2-16-2 Applicability of definitions**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 2. The definitions in sections 3 through 14 of this rule apply throughout this rule.**

*(Department of Child Services; 465 IAC 2-16-2)*

## **465 IAC 2-16-3 "Administrative payment" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 3. "Administrative payment" means the payment for reasonable costs related to administration of the residential treatment services providers. The administrative payment for residential treatment services providers shall cover the following reasonable costs, including, but not limited to:**

- (1) Case work.**
- (2) Case management.**
- (3) General administration and management.**
- (4) Accounting and finance.**
- (5) Human resources.**
- (6) Management information systems.**
- (7) Quality assurance procedures.**
- (8) Legal expenses, other than fees and costs related to certain litigation.**
- (9) Office supplies.**
- (10) Professional fees and dues.**
- (11) Subscriptions.**
- (12) Printing and postage.**
- (13) Medical examinations required as a condition of employment.**
- (14) A reasonable profit margin for residential treatment services providers that are not tax-exempt entities.**

**(15) Independent living services as specified in written agreements with residential treatment service providers.**  
*(Department of Child Services; 465 IAC 2-16-3)*

## **465 IAC 2-16-4 "Base rate" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 4. "Base rate" will include the following components:**

- (1) Maintenance payment.**
- (2) Administrative payment.**
- (3) Payment for costs that are not eligible for Title IV-E reimbursement, if such costs are related to licensing requirements as established by 465 IAC 2-9 through 465 IAC 2-13, as amended, or written agreement between the department and residential treatment service providers. .. Such costs shall include, but are not limited to:
  - (A) on-site nursing staff; or**
  - (B) transportation to medical appointments for the child.****

*(Department of Child Services; 465 IAC 2-16-4)*

## **465 IAC 2-16-5 "Cost report" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 6. (a) "Cost report" means a report that the department requires each residential treatment services provider to complete for each residential program that the residential treatment services provider operates.**

**(b) The cost report shall include the following:**

- (1) Actual costs incurred by or on behalf of the program in the most recently completed residential treatment services provider fiscal year, or in an alternative twelve (12) month period as specified by the department.**
- (2) Any other information relating to determination of the cost of operating or supervising the program that is specified by the department, or that the residential treatment services provider**

**considers relevant to determination of its reasonable administrative costs relating to the program, consistent with the applicable provisions of this rule.**

*(Department of Child Services; 465 IAC 2-16-5)*

## **465 IAC 2-16-6 "Department" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-1-1; IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 6. "Department" means the Indiana department of child services established by IC 31-25-1-1.**

*(Department of Child Services; 465 IAC 2-16-6)*

## **465 IAC 2-16-7 "Excess capacity" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 7. "Excess capacity" means, in cases where the actual average annual occupancy rate, as included in the cost report, is less than the minimum acceptable average annual occupancy rate as established annually by the department, for a particular residential treatment services provider or program, the difference between the:**

- (1) actual average annual occupancy rate of the residential treatment services provider's program; and**
- (2) minimum acceptable average annual occupancy rate of the residential treatment services provider's program as established annually by the department.**

*(Department of Child Services; 465 IAC 2-16-7)*

## **465 IAC 2-16-8 "Maintenance payment" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5; IC 31-40-1-2



**Sec. 8. "Maintenance payment" means a payment to a residential treatment services provider to cover the reasonable cost of, and the reasonable cost of providing, the following items, on behalf of a child placed with the residential treatment services provider for whom the department is responsible for payment:**

- (1) Food.**
- (2) Clothing.**
- (3) Shelter, including reasonable occupancy costs.**
- (4) Daily supervision.**
- (5) School supplies.**
- (6) Personal incidentals for the child.**
- (7) Liability insurance with respect to a child placed in the residential treatment services provider's facility.**
- (8) Reasonable travel expenses for the child to attend school where the child was enrolled before placement, to the extent that school transportation is not provided or required to be provided under applicable Indiana law by a public school corporation or other state or local agency.**
- (9) Reasonable travel expenses for the child for family visitation to the extent required by, or consistent with, the child's individual case plan or court order.**

*(Department of Child Services; 465 IAC 2-16-8)*

### **465 IAC 2-16-9 "Tax exempt entity" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 9. "Tax exempt entity" means a residential treatment services provider that has been determined to be exempt from federal income taxation by the Internal Revenue Service or otherwise operates under such an exemption pursuant to the Internal Revenue Code of 1986, as amended.**

*(Department of Child Services; 465 IAC 2-16-9)*

### **465 IAC 2-16-10 "Occupancy costs" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 10. "Occupancy costs" means facility related costs of a residential treatment services provider including, but not limited to, the following:**

- (1) Depreciation.**
- (2) Interest.**
- (3) Rent.**
- (4) Utilities.**
- (5) Building repairs and maintenance.**
- (6) Property taxes.**
- (7) Property insurance.**

*(Department of Child Services; 465 IAC 2-16-10)*

#### **465 IAC 2-17-11 "Probation department" defined**

**Authority: IC 31-25-2-18**

**Affected: IC 31-25-2-7; IC 31-27-6; IC 31-37**

**Sec. 11. "Probation department" means the office of a juvenile court in a county that is responsible for care and supervision of a child placed in an out-of-home placement by a dispositional decree under IC 31-37.**

*(Department of Child Services; 465 IAC 2-17-11)*

#### **465 IAC 2-16-12 "Public hearing" defined**

**Authority: IC 31-25-2-18**

**Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5**

**Sec. 12. "Public hearing" means a hearing, open to the public, for the department to accept comments, suggestions, and feedback related to annual review of the payment rates as set by the mechanisms in this rule.**

*(Department of Child Services; 465 IAC 2-16-12)*

#### **465 IAC 2-16-13 "Reasonable costs" defined**

**Authority: IC 31-25-2-18**

**Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5**

**Sec. 13. "Reasonable costs" mean costs of particular items payable by the department under this rule in amounts that the department determines to be reasonable and consistent with applicable guidelines as described in the following:**

**(1) 2 CFR Part 225 (OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments).**

**(2) 2 CFR Part 230 (OMB Circular A-122 Cost Principles for Non-Profit Organizations).**

**(3) 48 CFR Part 31 Section 201-3 (Determining Reasonableness).**  
*(Department of Child Services; 465 IAC 2-16-13)*

### **465 IAC 2-16-14 "Residential treatment services provider" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 14. "Residential treatment services provider" means a provider licensed by the department as a:**

**(1) child caring institution under IC 31-27-3;**

**(2) group home under IC 31-27-5; or**

**(3) private secure facility under 465 IAC 2-11.**

*(Department of Child Services; 465 IAC 2-16-14)*

### **465 IAC 2-16-15 "Title IV-E" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 15. "Title IV-E" means the following:**

**(1) Title IV-E of the Social Security Act as codified in 42 U.S.C. 671 et seq.**

**(2) Regulations of the U.S. Department of Health and Human Services, Administration on Children, Youth and Families (ACYF), applicable to Title IV-E of the Social Security Act, as codified in 45 CFR Part 1355 and 45 CFR Part 1356.**

**(3) Official interpretations of Title IV-E of the Social Security Act and applicable regulations by the federal administering agency, as**

**published in the Child Welfare Policy Manual issued by the Children's Bureau of the ACYF.**

*(Department of Child Services; 465 IAC 2-16-15)*

## **465 IAC 2-16-16 Annual public comment period; public hearing**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 16. (a) An annual period of public comment will be open for at least thirty (30) days preceding an annual public hearing. The public comment process will allow residential treatment service providers and other interested persons or organizations to communicate ideas, suggestions, or other comments regarding the rate setting methodology in writing or via e-mail to the department at an address specified in notices posted by the department on its website.**

**(b) At least one (1) public hearing regarding the rate setting methodology will be held on an annual basis at an address specified in a notice posted by the department on the department's website. The department will send electronic notice to residential treatment service providers currently under contract with DCS.**

**(c) Notice of a public hearing will be posted on the department's website for a period of thirty (30) consecutive days immediately before the date scheduled for the public hearing.**

**(d) The department may, in addition to posting information on its website, provide public notice of the time and place of a scheduled public hearing through advertisement or publication in news media or posting in locations accessible to the public.**

*(Department of Child Services; 465 IAC 2-16-16)*

## **465 IAC 2-16-17 Independent review of the rate setting methodology**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 17. An independent third party contractor will conduct an annual review of the department's rate setting methodology.**

*(Department of Child Services; 465 IAC 2-16-17)*

## **465 IAC 2-16-18 Payments**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 18. The department will make payments to a residential treatment services provider at the time and in the manner specified in a written agreement that is in a form approved by the department and executed by the parties.**

*(Department of Child Services; 465 IAC 2-16-18)*

## **465 IAC 2-16-19 Publishing of payments**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 19. The department will maintain and publish a list of all residential treatment services provider payment rate amounts.**

*(Department of Child Services; 465 IAC 2-16-19)*

## **465 IAC 2-16-20 Allowable costs in the base rate and other cost based rates approved by the department; cost report required**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 20. (a) Each residential treatment services provider shall submit to the department a cost report on an annual basis at the time and in the form required by the department. Failure to submit**

**the cost report timely may result in delay in payment or nonpayment by the department for costs incurred or services rendered by the residential treatment services provider.**

**(b) Any payments made to a residential treatment services provider will be made pursuant to a written agreement that is in a form specified by the department and executed by the parties.**

**(c) The department will review each cost report for reasonableness and eligibility under Title IV-E, OMB circulars and the CFR. The department may, in its discretion, adjust historical costs to reflect current costs by applying a cost of living adjustment. Based on that review, the department will submit to the residential treatment services provider a final approved cost report that the department will use in calculating the applicable rates.**

**(d) To be allowable, a cost must relate to one (1) or more of the categories described in section 4 of this rule. The cost must also generally satisfy the following criteria:**

**(1) The cost is reasonable, necessary, and related to the care of children.**

**(2) The cost is related to goods or services actually provided by the residential treatment services provider.**

**(e) The department will mail to the residential treatment services provider a letter (rate letter) stating the base rate and other cost based rates that the department agrees to pay, for each applicable program for children whom the department has placed or may place with the residential treatment services provider. The rate letter will include the effective date of the new approved base rate and other cost based rates as approved by the department. The effective date will be not less than forty-five (45) days after the date of the letter.**

**(f) If the residential treatment services provider accepts the rate offered by the department in the rate letter, such rate shall amend any agreement containing payment rates for placements currently in effect between the residential treatment services provider and the department.**

**(g) Each cost report submitted under subsection (a) is subject to further review or audit by the department. Such a review or audit may result in a request for a rate adjustment as specified in a new**

rate letter issued and mailed to the residential treatment services provider.

(h) If the residential treatment services provider has not been licensed, or operated a program for which a base rate or other cost based rate is required, for a period of at least twelve (12) months before the cost report is due to the department, the residential treatment services provider shall submit a cost report utilizing a comprehensive twelve (12) month operating budget for the new program at least ninety (90) days before the start of the program. The department will utilize its rate setting methodology as provided herein to establish a rate for the new program. The cost report shall be in the form specified or approved by the department.

(i) The department will make payments to each residential treatment services provider for reasonable costs of the residential treatment services provider, based on the base rate and other cost based rates approved by the department for that residential treatment services provider.

*(Department of Child Services; 465 IAC 2-16-20)*

## **465 IAC 2-16-21 Unallowable costs in the base rate and other cost based rates approved by the department**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 21. (a) Expenditures for the following services are ineligible costs under Title IV-E and are not to be included in the base rate:**

- (1) Counseling.**
- (2) Therapy.**
- (3) Education (other than school supplies).**
- (4) Health and medical services or treatment.**

(b) Consistent with federal guidelines, the department will not pay residential treatment services providers for certain unallowable expenses and costs, as specified in subsections (c) and (d). These unallowable costs will not be considered by the department in calculating the base rate and other cost based rate approved by the department. The unallowable costs and expenses as listed in

subsections (c) and (d) must be paid with funds secured from a funding source other than the department.

**(c) The following costs are unallowable:**

**(1) Fines and penalties resulting from violations of or failure of the organization to comply with federal, state, or local laws and regulations, except when incurred as a result of compliance with specific provisions of a contract with the department or instructions in writing from the department.**

**(2) Investment management counsel and staff and similar expenses incurred solely to enhance income from investments.**

**(3) Lobbying as defined in 2 CFR Part 230 (OMB Circular A-122 Cost Principles for Non-Profit Organizations).**

**(4) Organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions. A portion of administrative costs will be allocated to fundraising costs.**

**(5) Donations and contributions, including cash, property, and services made by the organization, regardless of the recipient.**

**(6) Donated goods or services received by the organization, except when donated services utilized in the performance of a direct cost activity are material in amount.**

**(7) Bad debts, including losses arising from uncollectible accounts and other claims, related collection costs, and related legal costs.**

**(8) Compensation and special benefits to owners in excess of amounts reasonable for the services rendered.**

**(9) Entertainment, including amusement, diversion, and social activities and any associated costs not directly related to reasonable entertainment and recreation for children placed with the residential treatment services provider by the department or a probation department, such as the following:**

**(A) Tickets to shows or sports events.**

**(B) Meals.**

**(C) Lodging.**

**(D) Rentals.**

**(E) Transportation.**

**(F) Gratuities.**

**(10) Alcoholic beverages.**

**(11) Litigation expenses and fees if the expenses and fees relate to a lawsuit or other legal proceeding:**

**(A) that:**



**(i) alleges a violation of, or failure to comply with, a federal, state, local, or foreign statute or regulation by the organization (including its agents and employees); and**

**(ii) results in:**

**(AA) a conviction in a criminal proceeding;**

**(BB) a determination of liability in a civil or administrative proceeding involving an allegation of fraud or similar misconduct;**

**(CC) the imposition of a monetary penalty in any civil or administrative proceeding;**

**(DD) the termination of the contract with the department;**

**by reason of a violation or failure to comply with a law or regulation, or a disposition by consent or compromise if the action could have resulted in any of the proceeding dispositions listed in this item;**

**(B) initiated by the residential treatment services provider against the department for:**

**(i) administrative or judicial review of any final rate, payment, child assessment, or child program placement determination made by the department;**

**(ii) interpretation or application of this rule, any other rule of the department, or any department policy;**

**(iii) alleged noncompliance by the department with any provision of Title IV-E or any other federal or state law, rule, or regulation; or**

**(iv) alleged breach of any contract between the department and the residential treatment services provider;**

**(C) naming as a party defendant any other federal or state governmental agency; or**

**(D) initiated by, or on behalf of, a child or a child's parent or legal guardian, against the residential treatment services provider, alleging a claim for damages, violation of a constitutional or statutory right, or any other basis for liability of the provider to the plaintiff or plaintiffs.**

**(12) Mortgage and loan principal payments.**

**(13) Contingency reserves or similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening.**

**(14) Advertising and marketing except those which relate to the core mission of the residential treatment services provider or are solely for the recruitment of personnel, the procurement of goods or services necessary to support the program, and other specific purposes necessary to meet the requirements of the department.**

**(15) Housing of nonclients, except as specifically authorized by the department in licensing rules as established by 465 IAC 2-9 through 465 IAC 2-13, as amended.**

**(16) Taxes from which exemptions are available to the residential treatment services provider directly, or which are available to the residential treatment services provider based on an exemption afforded by the federal government when the awarding agency makes available the necessary exemption certificates.**

**(17) Federal income taxes.**

**(18) Nonstraight line depreciation except where clear evidence indicates that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in later portions of its useful life.**

**(d) The following costs and expenses will be considered by the department to be unallowable costs on the cost report and will not be considered in calculating the administrative payment:**

**(1) Salaries: Amounts exceeding the maximum allowable variation established by the department from the median salary for the job category that is determined by the department using:**

**(A) most recent available Child Welfare League of America Salary Study published by CWLA Press, that contains a survey of applicable job category salaries; or**

**(B) applicable job category salaries paid by all residential treatment services providers in Indiana, as determined by reports compiled by, or available to, the department.**

**(2) Fringe benefits: Amounts exceeding the maximum allowable variation established by the department from the median fringe benefit rate (total fringe benefits as a percent of total wages) for all Indiana residential treatment services providers, as determined by reports compiled by, or available to, the department.**

**(3) Client to direct care staff ratios: Costs associated with staff in significant excess of licensing requirements as established by 465 IAC 2-9 through 465 IAC 2-13, as amended, or services**

standards adopted by the department and incorporated in a written agreement with residential treatment services providers.

(4) **Direct care staff to supervisor ratios:** Costs associated with supervisory staff in significant excess of licensing requirements as established by 465 IAC 2-9 through 465 IAC 2-13, as amended, or services standards adopted by the department and incorporated in a written agreement with residential treatment services providers.

(5) **Indirect cost allocations:** Any indirect cost allocations as a percentage of total costs in excess of the maximum percentage of total costs established by the department for allowable indirect costs.

(6) **Total administrative costs:** Any amount by which total administrative costs, as defined in the cost report, exceed a maximum percentage of total costs established by the department.

(7) **Occupancy costs associated with excess capacity** as defined in section 7 of this rule.

*(Department of Child Services; 465 IAC 2-16-21)*

## **465 IAC 2-16-22 Offsetting revenue and netting**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 22. (a) Eligible cost reimbursement offsetting will be applied as a credit in accordance with federal regulations as identified by 2 CFR Part 230 (OMB Circular A-122 Cost Principles for Non-Profit Organizations). The resulting net cost will be used to establish the administrative payment.**

**(b) Applicable credits refer to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions include, but are not limited to, the following:**

- (1) Purchase discounts.**
- (2) Rebates or allowances.**
- (3) Recoveries or indemnities on losses.**

**(4) Insurance refunds.**

**(5) Adjustments of overpayments or erroneous charges.**

**To the extent that such credits accruing or received by the residential treatment services provider relate to allowable costs, they shall be credited to the department either as a cost reduction or cash refund, as appropriate.**

**(c) In some instances, the amounts received from the department to finance residential treatment services provider activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures will be applied by the department in determining the administrative payment.**

*(Department of Child Services; 465 IAC 2-16-22)*

## **465 IAC 2-16-23 Behavioral health**

Authority: IC 31-25-2-18

Affected: IC 12-15-21; IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 23. (a) Counseling, therapy, skill building, behavioral health management, and other behavioral health services to meet the behavioral healthcare needs of the child will be provided upon authorization from the department.**

**(b) Effective no earlier than January 1, 2012, for children who are Medicaid eligible, behavioral health costs shall be billed to:**

**(1) Medicaid, for services authorized by the department that are Medicaid eligible; and**

**(2) the department through a contract with the department for services authorized by the department that are not covered by Medicaid.**

**(c) If subsection (b) does not apply and if private insurance is not available or does not cover the costs of services or treatment, behavioral health costs shall be billed to the department through a contract with the department for services authorized by the department.**

*(Department of Child Services; 465 IAC 2-16-23)*

## **465 IAC 2-16-24 Education**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 24. (a) Educational services may be provided directly by the residential treatment services provider upon authorization from the department.**

**(b) The residential treatment services provider must submit educational services cost information with the cost report or as such information is reasonably requested by the department. Any payments made by the department for educational services that are provided directly by a residential treatment services provider to a child placed with that residential treatment services provider shall be based on the reasonable costs contained in the residential treatment services provider's cost report.**

*(Department of Child Services; 465 IAC 2-16-24)*

## **465 IAC 2-16-25 Health and medical services or treatment**

Authority: IC 31-25-2-18

Affected: IC 12-15-21; IC 31-25-2-7; IC 31-27-6

**Sec. 25. The department will pay for health and medical services or treatment including prescription medication, directly to the service provider on behalf of children within the department or probation's system of care who are placed with a residential treatment services provider if:**

**(1) Medicaid denies a claim, or**

**(2) the child is not Medicaid eligible and private insurance is not available or does not cover the costs of services or treatment.**

*(Department of Child Services; 465 IAC 2-16-25)*

## **465 IAC 2-16-26 Review of rates**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-3; IC 31-27-5

**Sec. 26. (a) Residential treatment services providers may request a review of a base rate and other cost based rates approved by the department as stated in a rate letter issued in accordance with section 20(e) and (g) of this rule. A residential treatment services provider may request a review of the base rate and other cost based rates when it believes that:**

- (1) errors have been made in the:**
  - (A) cost report submitted to the department under section 20(a) of this rule;**
  - (B) calculation of the rate; or**
  - (C) determination of the reasonableness of any cost; or**
- (2) the determination of the rate by the department has a material adverse impact on child welfare in Indiana that an existing provider in the state of Indiana cannot adequately address.**

**(b) A request for review of any part of the base rate or other cost based rate approved by the department must be submitted in writing to the department within thirty (30) days after the department mails the notice letter to the residential treatment services provider pursuant to section 20(e) and (g) of this rule. The time limit for submitting a request for review under this section will be determined under the applicable provisions of IC 4-21.5-3-1 and IC 4-21.5-3-2.**

**(c) The request for review of the base rate or other cost based rate approved by the department shall be submitted in the form and manner specified by the department and shall include, but not be limited to, the following items:**

**(1) Identification of the current rate and approved new rate, as applicable to a specific program or service offered by the residential treatment services provider.**

**(2) An itemized statement of administrative and indirect costs that the residential treatment services provider considers allowable under the provisions of this rule.**

**(3) A clear, concise statement of the reasons for the requested change.**

**(4) A detailed statement of related information in support of the requested change.**

**The department will not accept or process an incomplete request for review of the base rate or other cost based rate approved by the department that does not include at least the items specified in this subsection.**

**(d) No request for review of the base rate or other cost based rate approved by the department will be acted upon if the residential treatment services provider has a current license that is in the process of being revoked by the department.**

**(e) The department will conduct a review and send notice of its decision to the residential treatment services providers within thirty (30) days of receiving the request for review under this section.**

*(Department of Child Services; 465 IAC 2-16-26)*

## **465 IAC 2-17-27 Appeal of the rates**

**Authority: IC 31-25-2-18**

**Affected: IC 4-21.5-3; IC 31-25-2-7; IC 31-27-6**

**Sec. 27. (a) A residential treatment services provider may request an appeal of the department administrative review decision under section 26 of this rule by submitting a written request within fifteen (15) days of receipt of the notice specified in section 26(e) of this rule for appeal under the applicable provisions of IC 4-21.5-3-7(a).**

**(b) Except as otherwise provided in this section, all provisions of IC 4-21.5-3 apply to appeals requested under subsection (a).**

**(c) The following provisions of IC 4-21.5-3 do not apply to appeals under this section:**

**(1) IC 4-21.5-3-4.**

**(2) IC 4-21.5-3-6.**

**(3) IC 4-21.5-3-8, relating to sanctions and temporary orders.**

**(4) IC 4-21.5-3-14(c), relating to burden of proof.**

**(d) The general counsel of the department will designate administrative law judges for purposes of appeals under this section.**

**(e) In any appeal under this section the residential treatment services provider has the burden of proof and the burden of persuasion to establish, by a preponderance of the evidence, that the department's decision following the administrative review is erroneous, based on a reason specified in section 26(a) of this rule.**

**(f) Unless a continuance is granted under subsection (g), the assigned administrative law judge will hold an administrative hearing not more than sixty (60) days after the department receives the written request. Unless a continuance is granted as provided in this section, hearings will be scheduled and held in the order in which the appeals are assigned to the administrative law judge, taking into consideration administrative hearings requested in other pending matters and any applicable deadlines established by law or rule.**

**(g) The administrative law judge may grant a continuance of the date for a hearing scheduled in accordance with subsection (f), for any of the following reasons:**

- (1) The petitioner files a written motion for continuance specifying the reasons for the request and alternate dates when the petitioner will be available and prepared to go forward with the hearing.**
- (2) The department files a written motion for continuance for good cause, determined under subsection (h).**
- (3) The administrative law judge orders a continuance for good cause, determined under subsection (i).**

**(h) The following shall constitute good cause for granting a continuance of a scheduled hearing date requested by the department:**

- (1) A necessary witness, or the counsel or other necessary representative of the department, is or will be unavailable on the scheduled hearing date, for a reason or reasons that could not have been anticipated at the time the hearing was scheduled.**



**(2) A motion or other proceeding relating to the appeal is pending that could be dispositive of the appeal, or otherwise materially affect the course or conduct of the hearing.**

**(3) Any other good cause, as determined by the administrative law judge at a prehearing conference on the motion for continuance.**

**(i) The following shall constitute good cause for granting a continuance of a scheduled hearing date on motion of the administrative law judge:**

**(1) Unanticipated congestion of the hearing calendar of the assigned administrative law judge.**

**(2) Unavailability of the assigned administrative law judge due to unforeseen circumstances, or a change in the judge assigned to the appeal for a reason consistent with any provision of IC 4-21.5-3.**

**(3) Any other good cause, as determined by the general counsel of the department or the general counsel's designee.**

**A continuance under this subsection shall be granted by a written order stating the reason or reasons for the continuance and entered in the record of the proceedings.**

**(j) If a hearing continuance is granted under subsection (g) the administrative law judge shall promptly schedule and conduct a prehearing conference under IC 4-21.5-3-18 to address the rescheduling of the hearing and any other matters relating to expediting decision of the appeal or otherwise resolving the issues presented.**

**(k) The administrative law judge may, with the consent of the parties, consolidate two (2) or more pending appeals that involve the same or substantially similar facts or issues, for purposes of a hearing and decision under this section.**

**(l) Unless an extension of time is granted by the general counsel of the department for good cause stated on the record, an**

**administrative law judge will issue a decision within ninety (90) days after completion of the hearing.**

**(m) Under IC 4-21.5-3-34 and IC 4-21.5-3-35, the department may by policy provide additional procedures to facilitate the expeditious conduct and disposition of administrative appeals under this section, or informal settlement of matters that are the subject of administrative appeals, not inconsistent with the provisions of this rule and applicable provisions of IC 4-21.5-3. A copy of any written policies or procedures relating to administrative appeals to which this section applies will be provided to each party or designated representative upon receipt of an appeal submitted under this section.**

*(Department of Child services; 465 IAC 2-17-29)*

**465 IAC 2-17-28 Rate in effect during pendency of review and appeal of rates**

**Authority: IC 31-25-2-18**

**Affected: IC 31-25-2-7; IC 31-27-6**

**Sec. 28. (a) The department will pay, during the time the rate is being reviewed or appealed, the amount stated in the most recent rate letter that was mailed to the residential treatment services provider in accordance with Section 20(e) or (g).**

**(b) Any payments made by the department or received by the residential treatment services provider after the effective date in the notice letter mailed to the residential treatment services provider in accordance with Section 20(e) or (g) will be adjusted in accordance with the final approved rate following completion of the administrative review under section 26 of this rule and any administrative appeal under section 27 of this rule, retroactive to the effective date of the notice letter.**

*(Department of Child services; 465 IAC 2-17-28)*

**Section 2. The payment amounts determined under this rule shall take effect no earlier than January 1, 2012.**

## Exhibit B

### Proposed Rule

LSA Document #10-417

### DIGEST

Adds 465 IAC 2-17, concerning child placing agencies licensed by the department under IC 31-27-6, to establish the mechanisms the department will use for setting maintenance payments to foster family homes licensed and supervised through child placing agencies and payments for child placing agency administrative costs and other services provided through the agency. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

#### **465 IAC 2-17**

SECTION 1. 465 IAC 2-17 IS ADDED TO READ AS FOLLOWS:

### **Rule 17. Rate Setting for Child Placing Agencies**

#### **465 IAC 2-17-1 Scope and purpose**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 1. (a) Every CPA in the state of Indiana must be licensed by the department in accordance with state law in order for the department to recommend placement of a child with a CPA or pay for the costs of such placement.**

**(b) This rule establishes the procedures the department will use for determining and making maintenance payments to or for foster parents of children placed by the department or a probation department with a CPA for foster care in a licensed foster home and administrative payments to child placing agencies in the state of Indiana.**

*(Department of Child Services; 465 IAC 2-17-1)*

## **465 IAC 2-17-2 Applicability of definitions**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 2. The definitions in sections 3 through 17 of this rule apply throughout this rule.**

*(Department of Child Services; 465 IAC 2-17-2)*

## **465 IAC 2-17-3 "Administrative payment" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6; IC 31-40-1-2

**Sec. 3. "Administrative payment" means the payment for reasonable costs related to administration of the CPA. The administrative payment for CPAs shall cover the following reasonable costs, relating to identification of foster family homes, placement of children referred by the department or a probation department for care in foster family homes supervised by the CPA, and provision of services to the foster families and children placed with the CPA, including, but not limited to:**

- (1) Case work.**
- (2) Case management.**
- (3) Foster home recruiting.**
- (4) Foster home licensing preparation and maintenance.**
- (5) Foster parent training.**
- (6) foster parent support;**
- (7) General administration and management.**
- (8) Accounting and finance.**
- (9) Human resources.**
- (10) Management information systems.**
- (11) Quality assurance procedures.**
- (12) Legal expenses, other than fees and costs related to certain litigation.**
- (13) Office supplies.**
- (14) Professional fees and dues.**
- (15) Subscriptions.**
- (16) Printing and postage.**
- (17) Independent living services as specified in written agreements with CPAs.**
- (18) Medical examinations required as a condition of employment.**

**(198) A reasonable profit margin if the agency is not a tax-exempt entity.**

*(Department of Child Services; 465 IAC 2-17-3)*

## **465 IAC 2-17-4 "Approved assessment tool" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6; IC 31-37; IC 33-38-9-3

### **Sec. 4. "Approved assessment tool means:**

(a) **In the case of a child placed in foster care through a child in need of services case under IC 31-34, the approved department assessment tool, which is a department designated, child-appropriate instrument for the assessment of child functional impairment that is selected or approved by the department and that is used by the department to assist in assessing the needs and strengths of children within the department's system of care.**

(b) **In the case of a child placed in foster care through a juvenile delinquency case under IC 31-37, the approved probation assessment tool, which is a child-appropriate instrument for the assessment of child functional impairment that is designated by board of directors of the judicial conference of Indiana established by IC 33-38-9-3 for use by a probation department to assist in assessing the needs and strengths of children under supervision of the probation department.**

*(Department of Child Services; 465 IAC 2-17-4)*

## **465 IAC 2-17-5 "Child placing agency" or "CPA" defined**

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.5; IC 31-25-2-7; IC 31-27-6

**Sec. 5. "Child placing agency" or "CPA" have the definition set forth in IC 31-9-2-17.5.**

*(Department of Child Services; 465 IAC 2-17-5)*

## **465 IAC 2-17-6 "Cost report" defined**

Authority: IC 31-25-2-18  
Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 6. (a) "Cost report" means a report that the department requires each CPA to complete for each foster care program that the CPA operates or supervises.**

**(b) The cost report shall include the following:**  
**(1) Actual costs incurred on behalf of each foster care program in the most recently completed CPA fiscal year, or in an alternative twelve (12) month period as specified by the department.**  
**(2) Any other information relating to determination of the cost of operating or supervising the program that is specified by the department, or that the CPA considers relevant to determination of its reasonable administrative costs relating to the program, consistent with the applicable provisions of this rule.**

*(Department of Child Services; 465 IAC 2-17-6)*

### **465 IAC 2-17-7 "Critical case juncture" defined**

Authority: IC 31-25-2-18  
Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 7. "Critical case juncture" means an event or episode, as determined by the department or a probation department, involving the child or family that has caused or may cause a disruption in the child's placement.**

*(Department of Child Services; 465 IAC 2-17-7)*

### **465 IAC 2-17-8 "Department" defined**

Authority: IC 31-25-2-18  
Affected: IC 31-25-1-1; IC 31-25-2-7; IC 31-27-6

**Sec. 8. "Department" means the Indiana department of child services established by IC 31-25-1-1.**

*(Department of Child Services; 465 IAC 2-17-8)*

## **465 IAC 2-17-9 "Enhanced supervision" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 9. "Enhanced supervision" means additional daily supervision that a foster parent will be required to provide for a child with extraordinary needs, based on categories of supervision established by the department.**

*(Department of Child Services; 465 IAC 2-17-9)*

## **465 IAC 2-17-10 "Family case manager" or "FCM" defined**

Authority: IC 31-25-2-18

Affected: IC 31-9-2-11; IC 31-25-2-5; IC 31-25-2-7; IC 31-27-6

**Sec. 10. "Family case manager" or "FCM" means a caseworker, as defined in IC 31-9-2-11, who is described in IC 31-25-2-5.**

*(Department of Child Services; 465 IAC 2-17-10)*

## **465 IAC 2-17-11 "Foster home" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-4-14; IC 31-27-6

**Sec. 11. "Foster home" means a home that is:**  
**(1) licensed under IC 31-27-4 upon recommendation of a licensed child placing agency, as provided in IC 31-27-4-14; and**  
**(2) operated, supervised, and monitored by a licensed child placing agency.**

*(Department of Child Services; 465 IAC 2-17-11)*

## **465 IAC 2-17-12 "Maintenance payment" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6; IC 31-40-1-2



**Sec. 12. "Maintenance payment" means payments to cover the reasonable cost of, and the reasonable cost of providing, the following items on behalf of a child placed with a CPA by the department or a probation department, for whom the department is responsible for payment of the cost of child services under IC 31-40-1-2:**

- (1) Food.**
- (2) Clothing.**
- (3) Shelter.**
- (4) Daily supervision.**
- (5) Travel expenses incurred for the following purposes:**
  - (a) visitation with the child's family; and**
  - (b) travel to and from the child's school.**
- (6) Personal incidentals for the child.**
- (7) School supplies.**

*(Department of Child Services; 465 IAC 2-17-12)*

### **465 IAC 2-17-13 " Tax exempt entity" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 13. "Tax exempt entity" means a CPA that has been determined to be exempt from federal income taxation by the Internal Revenue Service or otherwise operates under such an exemption pursuant to the Internal Revenue Code of 1986, as amended.**

*(Department of Child Services; 465 IAC 2-17-13)*

### **465 IAC 2-17-14 "Probation department" defined**

**Authority: IC 31-25-2-18**

**Affected: IC 31-25-2-7; IC 31-27-6; IC 31-37**

**Sec. 14. "Probation department" means the office of a juvenile court in a county that is responsible for care and supervision of a child placed in an out-of-home placement by a dispositional decree under IC 31-37.**

*(Department of Child Services; 465 IAC 2-17-14)*

## **465 IAC 2-17-15 "Public hearing" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 15. "Public hearing" means a hearing, open to the public, for the department to accept comments, suggestions, and feedback related to annual review of the maintenance payment and administrative payment as set by the mechanisms in this rule.**

*(Department of Child Services; 465 IAC 2-17-15)*

## **465 IAC 2-17-16 "Reasonable costs" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 16. "Reasonable costs" mean costs of particular items of the administrative payment in amounts that the department determines to be reasonable and consistent with applicable guidelines as described in the following:**

- (1) 2 CFR Part 225 (OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments).**
- (2) 2 CFR Part 230 (OMB Circular A-122 Cost Principles for Non-Profit Organizations).**
- (3) 48 CFR Part 31, Section 201-3 (Determining Reasonableness).**

*(Department of Child Services; 465 IAC 2-17-16)*

## **465 IAC 2-17-17 "Title IV-E" defined**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 17. "Title IV-E" means the following:**

- (1) Title IV-E of the Social Security Act as codified in 42 U.S.C. 671 et seq.**
- (2) Regulations of the U.S. Department of Health and Human Services, Administration on Children, Youth and Families (ACYF), applicable to Title IV-E of the Social Security Act, as codified in 45 CFR Part 1355 and 45 CFR Part 1356.**

**(3) Official interpretations of Title IV-E of the Social Security Act and applicable regulations by the federal administering agency, as published in the Child Welfare Policy Manual issued by the Children's Bureau of the ACYF.**

*(Department of Child Services; 465 IAC 2-17-17)*

## **465 IAC 2-17-18 Annual public comment period; public hearing**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 18. (a) An annual period of public comment will be open for at least thirty (30) days preceding an annual public hearing. The public comment time period will allow each CPA and other interested persons or organizations to communicate ideas, suggestions, or other comments regarding the rate setting methodology in writing or via e-mail to the department at an address specified in notices posted by the department on its website.**

**(b) At least one (1) public hearing regarding the rate setting methodology will be held on an annual basis at an address specified in a notice posted by the department on the department's website. The department will send electronic notice to CPAs currently under contract with DCS.**

**(c) Notice of a public hearing will be posted on the department's website for a period of at least thirty (30) consecutive days immediately before the date scheduled for the hearing.**

**(d) The department may, in addition to posting information on its website, provide public notice of the time and place of a scheduled public hearing through advertisement or publication in news media or posting in locations accessible to the public.**

*(Department of Child Services; 465 IAC 2-17-18)*

## **465 IAC 2-17-19 Payments to foster parents**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 19. (a) Every child under the care and control of the department or a probation department in a foster home setting is entitled to a maintenance payment. The foster parent or parents will receive a maintenance payment in the form of a per diem payment. All payments will be made at least monthly for foster care provided during the preceding calendar month.**

**(b) The amount of a maintenance payment payable as provided in this section may vary based upon the age of the child.**

**(c) The foster parent or parents may receive an additional amount of properly claimed travel expenses incurred for a child placed in the foster home. The additional travel expenses will be paid if:**

**(1) The foster parent travels in excess of the cost of travel that is paid through the maintenance payment; and**

**(2) The travel is for one or more of the following purposes and is consistent with the child's individual case plan or a court order:**

**(A) Travel for visitation with the child's family;**

**(B) Travel between the foster family home and the school in which the child was enrolled before placement and continues to be enrolled while residing with the foster family, to the extent that school transportation is not provided or required to be provided under applicable Indiana law by a public school corporation or other state or local agency;**

**(C) Travel to physical or behavioral health appointments;**

**(D) Travel for involvement in or attendance at:**

**(i) administrative case or judicial reviews;**

**(ii) case conferences or team meetings; or**

**(iii) foster parent training;**

**(E) Other travel approved in writing in advance by the department.**

**(d) The foster parent or parents may receive an additional amount for enhanced supervision based on the category of supervision applicable to the child. The department or a probation department is responsible for determining the child's assessed category of supervision by utilizing the applicable approved assessment tool and input from the parties involved in the child's case, including the CPA, to determine the appropriate category of supervision. The enhanced supervision payment may increase or decrease based on the child's needs at the time of a reassessment.**

**(e) Except as provided in this subsection, the department will not pay an additional amount for enhanced supervision until after the approved assessment tool has been completed. The department may, in exceptional circumstances, as determined by the department, pay an amount greater than the maintenance payment at the time of placement and before completion of the approved assessment tool. In considering whether to approve a greater payment under this subsection, the department shall consider the child's specific, previously identified needs for enhanced supervision and input from the parties involved in the child's case, including the CPA, that would require additional payment of a temporary enhanced supervision amount prior to the determination of an appropriate enhanced supervision amount under subsection (d).**

**(f) To the extent consistent with the child's assessed needs, a foster parent may also receive payment for costs of caring for a child that are not included in the maintenance payment, if such costs are determined by the department to be prudent and reasonably necessary in order to serve the child's needs in connection with the child's permanency plan or other plan of care and treatment. The department will pay for those approved costs in accordance with department policies as such policies are published by the department from time to time.**

**(g) The department will make foster care liability insurance available to foster parents.**

*(Department of Child Services; 465 IAC 2-17-19)*

## **20 Establishment and adjustment of the maintenance payment and enhanced supervision payment**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 20. (a) The department shall commission an independent contractor to conduct a study, using primary and secondary data, to assist the department with the determination of the reasonable costs of caring for a foster child in Indiana in accordance with requirements and guidelines as set forth in Title IV-E.**

**(b) The study will consider the age of a child and the relevant costs associated with the care of children, including children in foster care.**

**(c) From this study, the independent contractor will construct a model of maintenance payments. The study will provide information to the department so that the department can establish appropriate maintenance payment rates and enhanced supervision payment rates. The completed study will provide the methodology for calculating future adjustments, if any, as underlying costs change.**

**(d) The department will determine the maintenance payment rate that will be paid to all foster parents.**

**(e) The department will determine the enhanced supervision payment rates, which shall correspond to the categories of supervision established by the approved assessment tool as defined by section 4(a) of this rule.**

**(f) The maintenance payment rates and enhanced supervision payment rates will be reviewed annually and adjusted in accordance with subsection (c).**

**(g) The department will publish the current maintenance payment and the enhanced supervision rates in a provider manual maintained by the department on the department's website.**

**(h) The department may, at its discretion, develop and implement pilot programs by written agreement with a CPA, relating to a foster home or group of foster homes that the CPA supervises, and that may include payment amounts or procedures during a specified time period that differ from the amounts or procedures determined under this section.**

*(Department of Child Services; 465 IAC 2-17-20)*

## **465 IAC 2-17-21 Allowable costs in the administrative payment; cost report required**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 21. (a) The department will make payments to each CPA for reasonable costs related to administration of the CPA, based on the administrative payment approved by the department for that CPA.**

**(b) Any payments made to a CPA will be made pursuant to a written agreement that is in a form specified by the department and executed by the parties.**

**(c) The department will maintain and publish a list of all CPA administrative payments.**

**(d) Each CPA shall submit to the department a cost report on an annual basis at the time and in the form required by the department. Failure to submit the cost report timely may result in delay in payment or nonpayment by the department for administrative costs incurred or services rendered by the CPA.**

**(e) The department will review each cost report for reasonableness and eligibility under Title IV-E, OMB circulars and the CFR. The department may, in its discretion, adjust historical costs to reflect current costs by applying a cost of living adjustment. For costs that are not eligible under Title IV-E, the department will review the cost report for allowability as determined by the department. Based on that review, the department will submit to the CPA a final approved cost report that the department will use in calculating the applicable rates.**

**(f) To be allowable, a cost must relate to one (1) or more of the categories described in section 3 of this rule. The cost must also generally satisfy the following criteria:**

**(1) The cost is reasonable, necessary, and related to the care of children.**

**(2) The cost is related to goods or services actually provided by the CPA.**

**(g) The department will mail to the CPA a letter (notice letter) stating the administrative payment or payments that the department agrees to pay, for each applicable program for children whom the department has placed or may place with the CPA. The notice letter will include the effective date of the new approved administrative payment or payments as approved by the department. The effective date will be not less than forty-five (45) days after the date of the letter.**

**(h) If the CPA accepts the administrative payment offered by the department in the notice letter, such administrative payment shall amend any agreement containing payment rates that include administrative costs for placements currently in effect between the CPA and the department.**

**(i) Each cost report submitted under subsection (d) is subject to further review or audit by the department. Such a review or audit may result in an administrative payment adjustment as specified in a new administrative payment notice letter issued and mailed to the CPA.**

**(j) If the CPA has not been licensed, or operated a program for which an administrative payment is required, for a period of at least twelve (12) months before the cost report is due to the department, the CPA shall submit a cost report utilizing a comprehensive twelve (12) month operating budget for the new program at least ninety (90) days before the start of the program. The department will utilize its rate setting methodology as provided herein to establish an administrative payment for the new program. The cost report shall be in the form specified or approved by the department.**

*(Department of Child Services; 465 IAC 2-17-21)*

## **465 IAC 2-17-22 Offsetting revenue and netting**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 22. (a) Eligible cost reimbursement offsetting will be applied as a credit in accordance with federal regulations as identified by 2 CFR Part 230 (OMB Circular A-122 Cost Principles for Non-Profit Organizations). The resulting net cost will be used to establish the administrative payment.**

**(b) Applicable credits refer to those receipts, or reduction of expenditures that operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions include, but are not limited to, the following:**

- (1) Purchase discounts.**
- (2) Rebates or allowances.**
- (3) Recoveries or indemnities on losses.**



**(4) Insurance refunds.**

**(5) Adjustments of overpayments or erroneous charges.**

**To the extent that such credits accruing or received by the CPA relate to allowable cost, they shall be credited to the department either as a cost reduction or cash refund, as appropriate.**

**(c) In some instances, the amounts received from the department to finance CPA activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures will be applied by the department in determining the administrative payment.**

*(Department of Child Services; 465 IAC 2-17-22)*

## **465 IAC 2-17-23 Unallowable costs in the administrative payment**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 23. (a) Expenditures for the services listed in this subsection are ineligible costs under Title IV-E. The following services may be provided and paid for only upon separate authorization from the department, or as specified in the individual placement agreement for a particular child:**

**(1) Counseling.**

**(2) Therapy.**

**(3) Health and medical services or treatment.**

**(b) Consistent with federal guidelines, the department will not pay any CPA for certain unallowable expenses and costs, as specified in subsections (c) and (d). The unallowable costs and expenses will not be considered by the department in calculating the administrative payment. The unallowable costs and expenses as listed in subsections (c) and (d) must be paid with funds secured from a funding source other than the department.**

**(c) The following costs are unallowable:**

**(1) Fines and penalties resulting from violations of or failure of the organization to comply with federal, state, or local laws and regulations, except when incurred as a result of compliance with specific provisions a contract with the department or instructions in writing from the department.**

- (2) Investment management counsel and staff and similar expenses incurred solely to enhance income from investments.**
- (3) Lobbying as defined in 2 CFR Part 230 (OMB Circular A-122 Cost Principles for Non-Profit Organizations).**
- (4) Organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions. A portion of administrative costs will be allocated to fundraising costs.**
- (5) Donations and contributions, including cash, property, and services made by the organization, regardless of the recipient.**
- (6) Donated goods or services received by the organization, except when donated services utilized in the performance of a direct cost activity are material in amount.**
- (7) Bad debts, including losses arising from uncollectible accounts and other claims, related collection costs, and related legal costs.**
- (8) Compensation and special benefits to owners in excess of amounts reasonable for the services rendered.**
- (9) Entertainment, including amusement, diversion, and social activities and any associated costs not directly related to reasonable entertainment and recreation for foster children, such as the following:
  - (A) Tickets to shows or sports events.**
  - (B) Meals.**
  - (C) Lodging.**
  - (D) Rentals.**
  - (E) Transportation.**
  - (F) Gratuities.****
- (10) Alcoholic beverages.**
- (11) Litigation expenses and fees if the expenses and fees relate to a lawsuit or other legal proceeding:
  - (A) that:
    - (i) alleges a violation of, or failure to comply with, a federal, state, local, or foreign statute or regulation by the organization (including its agents and employees); and**
    - (ii) results in:
      - (AA) a conviction in a criminal proceeding;**
      - (BB) a determination of liability in a civil or administrative proceeding involving an allegation of fraud or similar misconduct;**
      - (CC) the imposition of a monetary penalty in any civil or administrative proceeding;********

**(DD) the termination of the contract with the department;  
by reason of a violation or failure to comply with a law or regulation, or a disposition by consent or compromise if the action could have resulted in any of the proceeding dispositions listed in this item;**

**(B) initiated by the CPA against the department for:**  
**(i) administrative or judicial review of any final rate, payment, child assessment, or child category of supervision determination made by the department;**  
**(ii) interpretation or application of this rule, any other rule of the department, or any department policy;**  
**(iii) alleged noncompliance by the department with any provision of Title IV-E or any other federal or state law, rule, or regulation; or**  
**(iv) alleged breach of any contract between the department and the CPA;**

**(C) naming as a party defendant any other federal or state governmental agency; or**

**(D) initiated by, or on behalf of, a child, a child's parent or legal guardian, or a foster parent, against the CPA, alleging a claim for damages, breach of contract, violation of a constitutional or statutory right, or any other basis for liability of the CPA to the plaintiff or plaintiffs.**

**(12) Mortgage and loan principal payments.**

**(13) Contingency reserves or similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening.**

**(14) Advertising and marketing except those which relate to the core foster care mission of the CPA or are solely for the recruitment of personnel, the procurement of goods or services necessary to support the program, and other specific purposes necessary to meet the requirements of the department.**

**(15) Housing of nonclients.**

**(16) Taxes from which exemptions are available to the CPA directly, or which are available to the CPA based on an exemption afforded by the federal government when the awarding agency makes available the necessary exemption certificates.**

**(17) Federal income taxes.**

**(18) Nonstraight line depreciation except where clear evidence indicates that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in later portions of its useful life.**

**(d) The following costs and expenses will be considered by the department to be unallowable costs on the cost report and will not be considered in calculating the administrative payment:**

**(1) Salaries: Amounts exceeding the maximum allowable variation established by the department from the median salary for the job category that is determined by the department using:**

**(A) the most recent available Child Welfare League of America Salary Study published by CWLA Press, that contains a survey of applicable job category salaries; or**

**(B) the applicable job category salaries paid by all CPAs in Indiana, as determined by reports compiled by, or available to, the department.**

**(2) Fringe benefits: Amounts exceeding the maximum allowable variation established by the department from the median fringe benefit rate (total fringe benefits as a percent of total wages) for all Indiana CPAs, as determined by reports compiled by, or available to, the department.**

**(3) Case management caseloads: Costs associated with staff in significant excess of licensing requirements as established by 465 IAC 2-2, as amended, or services standards adopted by the department and incorporated in a written agreement with CPAs.**

**(4) Case manager to supervisor ratios: Costs associated with supervisory staff in significant excess of licensing requirements as established by 465 IAC 2-2, as amended, or services standards adopted by the department and incorporated in a written agreement with CPAs.**

**(5) Indirect cost allocations: Any indirect cost allocations as a percentage of total costs in excess of the maximum percentage of total costs established by the department for allowable indirect costs.**

**(6) Total administrative costs: Any amount by which total administrative costs, as defined in the cost report, exceed a maximum percentage of total costs established by the department.**

*(Department of Child Services; 465 IAC 2-17-23)*

## **465 IAC 2-17-24 Independent review of administrative payment rate setting methodology**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 24. An independent third party contractor will conduct an annual review of the department's administrative payment rate setting methodology.**

*(Department of Child Services; 465 IAC 2-17-24)*

## **465 IAC 2-17-26 Behavioral health**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 26. (a) Counseling, therapy, skill building, behavioral health management, and other behavioral health services to meet the behavioral healthcare needs of the child may be provided by the CPA upon separate authorization from the department.**

**(b) Effective no earlier than January 1, 2012, for children who are Medicaid eligible, behavioral health costs shall be billed to:**

**(1) Medicaid for services authorized by the department that are Medicaid eligible; and**

**(2) the department through a contract with the department for services authorized by the department that are not covered by Medicaid.**

**(c) If subsection (b) does not apply and if private insurance is not available or does not cover the costs of services or treatment, behavioral health costs shall be billed to the department through a contract with the department for services authorized by the department.**

*(Department of Child Services; 465 IAC 2-17-26)*

## **465 IAC 2-17-27 Health and medical services or treatment**

Authority: IC 31-25-2-18  
Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 27. The department will pay for health and medical services or treatment, including prescription medication, directly to the service provider, on behalf of children within the department or probation's system of care who are placed in foster care through a CPA if:**

- (1) Medicaid denies a claim, or**
  - (2) the child is not Medicaid eligible and private insurance is not available or does not cover the costs of services or treatment.**
- (Department of Child Services; 465 IAC 2-17-27)*

## **465 IAC 2-17-28 Review of the administrative payment and other cost based rates**

Authority: IC 31-25-2-18  
Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 28. (a) A CPA may request a review of the administrative payment and other cost based rates approved by the department as stated in a notice letter issued in accordance with section 21(g) and (i) of this rule. A CPA may request a review of the administrative payment and other cost based rates when it believes that:**

- (1) errors have been made in the:**
  - (A) cost report submitted to the department under section 21(d) of this rule;**
  - (B) calculation of the administrative payment in accordance with section 21 and 23 of this rule; or**
  - (C) the determination by the department of the reasonableness of any cost; or**
- (2) the determination of the administrative payment by the department has an adverse impact on child welfare in Indiana that an existing provider in the state of Indiana cannot adequately address. .**

**(b) A request for review of the administrative payment approved by the department must be submitted in writing to the department no later than thirty (30) days after the department mails the notice letter to the CPA pursuant to section 21(g) or (i) of this rule. The time limit for submitting a request for review under this section will be determined under the applicable provisions of IC 4-21.5-3-1 and IC 4-21.5-3-2.**

**(c) The request for review of the administrative payment shall be submitted in the form and manner specified by the department and shall include, but not be limited to, the following items:**

**(1) Identification of the current administrative payment and approved new administrative payment, as applicable to a specific program or service offered by the CPA.**

**(2) An itemized statement of administrative and indirect costs that the CPA considers allowable under the provisions of this rule.**

**(3) A clear, concise statement of the reasons for the requested change.**

**(4) A detailed statement of related information in support of the requested change.**

**The department will not accept or process an incomplete request for review of the administrative payment that does not include at least the items specified in this subsection.**

**(d) No request for review of the administrative payment will be acted upon if the CPA has a current license that is in the process of being revoked by the department.**

**(e) The department will conduct a review of the administrative payment and send notice of its decision to the CPA within thirty (30) days of receiving the request for review under this section.**

*(Department of Child Services; 465 IAC 2-17-28)*

#### **465 IAC 2-17-29 Appeal of the administrative payment and other cost based rates**

**Authority: IC 31-25-2-18**

**Affected: IC 4-21.5-3; IC 31-25-2-7; IC 31-27-6**

**Sec. 29. (a) A CPA may request an appeal of the department administrative review decision under section 28 of this rule by submitting a written request within fifteen (15) days of receipt of the notice specified in section 29(e) of this rule for appeal under the applicable provisions of IC 4-21.5-3-7(a).**

**(b) Except as otherwise provided in this section, all provisions of IC 4-21.5-3 apply to appeals requested under subsection (a).**

**(c) The following provisions of IC 4-21.5-3 do not apply to appeals under this section:**

- (1) IC 4-21.5-3-4.**
- (2) IC 4-21.5-3-6.**
- (3) IC 4-21.5-3-8, relating to sanctions and temporary orders.**
- (4) IC 4-21.5-3-14(c), relating to burden of proof.**

**(d) The general counsel of the department will designate administrative law judges for purposes of appeals under this section.**

**(e) In any appeal under this section the CPA has the burden of proof and the burden of persuasion to establish, by a preponderance of the evidence, that the department's decision following the administrative review is erroneous, based on a reason specified in section 28(a) of this rule.**

**(f) Unless a continuance is granted under subsection (g), the assigned administrative law judge will hold an administrative hearing not more than sixty (60) days after the department receives the written request. Unless a continuance is granted as provided in this section, hearings will be scheduled and held in the order in which the appeals are assigned to the administrative law judge, taking into consideration administrative hearings requested in other pending matters and any applicable deadlines established by law or rule.**

**(g) The administrative law judge may grant a continuance of the date for a hearing scheduled in accordance with subsection (f), for any of the following reasons:**

- (1) The petitioner files a written motion for continuance specifying the reasons for the request and alternate dates when the petitioner will be available and prepared to go forward with the hearing.**
- (2) The department files a written motion for continuance for good cause, determined under subsection (h).**
- (3) The administrative law judge orders a continuance for good cause, determined under subsection (i).**

**(h) The following shall constitute good cause for granting a continuance of a scheduled hearing date requested by the department:**



**(1) A necessary witness, or the counsel or other necessary representative of the department, is or will be unavailable on the scheduled hearing date, for a reason or reasons that could not have been anticipated at the time the hearing was scheduled.**

**(2) A motion or other proceeding relating to the appeal is pending that could be dispositive of the appeal, or otherwise materially affect the course or conduct of the hearing.**

**(3) Any other good cause, as determined by the administrative law judge at a prehearing conference on the motion for continuance.**

**(i) The following shall constitute good cause for granting a continuance of a scheduled hearing date on motion of the administrative law judge:**

**(1) Unanticipated congestion of the hearing calendar of the assigned administrative law judge.**

**(2) Unavailability of the assigned administrative law judge due to unforeseen circumstances, or a change in the judge assigned to the appeal for a reason consistent with any provision of IC 4-21.5-3.**

**(3) Any other good cause, as determined by the general counsel of the department or the general counsel's designee.**

**A continuance under this subsection shall be granted by a written order stating the reason or reasons for the continuance and entered in the record of the proceedings.**

**(j) If a hearing continuance is granted under subsection (g) the administrative law judge shall promptly schedule and conduct a prehearing conference under IC 4-21.5-3-18 to address the rescheduling of the hearing and any other matters relating to expediting decision of the appeal or otherwise resolving the issues presented.**

**(k) The administrative law judge may, with the consent of the parties, consolidate two (2) or more pending appeals that involve the same or substantially similar facts or issues, for purposes of a hearing and decision under this section.**

**(l) Unless an extension of time is granted by the general counsel of the department for good cause stated on the record, an**

**administrative law judge will issue a decision within ninety (90) days after completion of the hearing.**

**(m) Under IC 4-21.5-3-34 and IC 4-21.5-3-35, the department may by policy provide additional procedures to facilitate the expeditious conduct and disposition of administrative appeals under this section, or informal settlement of matters that are the subject of administrative appeals, not inconsistent with the provisions of this rule and applicable provisions of IC 4-21.5-3. A copy of any written policies or procedures relating to administrative appeals to which this section applies will be provided to each party or designated representative upon receipt of an appeal submitted under this section.**

*(Department of Child services; 465 IAC 2-17-29)*

**465 IAC 2-17-30 Rate in effect during pendency of review and appeal of the administrative payment**

**Authority: IC 31-25-2-18**

**Affected: IC 31-25-2-7; IC 31-27-6**

**Sec. 30. (a) The department will pay, during the time the administrative payment is being reviewed or appealed, the amount stated in the most recent administrative payment notice letter that was mailed to the CPA in accordance with Section 21(g) or (i).**

**(b) Any payments made by the department or received by the CPA after the effective date in the notice letter mailed to the CPA in accordance with Section 21(g) or (i) will be adjusted in accordance with the final approved payment amount following completion of the administrative review under section 28 of this rule and any administrative appeal under section 29 of this rule, retroactive to the effective date of the notice letter.**

*(Department of Child services; 465 IAC 2-17-30)*

**465 IAC 2-17-31 Initial review of the child's category of supervision**

**Authority: IC 31-25-2-18**

**Affected: IC 31-25-2-7; IC 31-27-6**

**Sec. 31. (a) A CPA may request a review of the child's category of supervision as determined in accordance with sections 20 and 26 of this rule.**

**(b) A request by a CPA for review of the child's category of supervision must be submitted in writing to the FCM or probation officer who manages the child's case plan no later than thirty (30) days after the written notice of the child's category of supervision has been sent to the CPA. Notice is effective upon mailing of the notice disclosing the child's category of supervision to the CPA's address. A request for review of the child's initially approved category of supervision submitted more than thirty (30) days after the notice of the child's category of supervision was mailed will not be considered.**

**(c) The request for review of the child's category of supervision shall be submitted in the form and manner specified by the department and shall include, but not be limited to, the following items:**

- (1) Identification of the child's current category of supervision.**
- (2) A clear, concise statement of the reasons for the requested change.**
- (3) A detailed statement of related information in support of the change.**

**An incomplete request for review of the child's category of supervision that does not include at least the items specified in this subsection cannot be accepted or processed.**

**(d) When a request for a review of the category of supervision that complies with subsection (c) is received, the FCM or probation officer will hold a meeting with the CPA and foster parent to discuss the needs of the child within fourteen (14) days of the request for review. The department's local office director or designee or the chief probation officer or designee must be in attendance at this meeting. Notice of the outcome of the review must be given by the department's local office director or designee or the chief probation officer or designee, in writing, to the CPA within five (5) business days of the meeting.**

**(e) No request for review of the child's category of supervision will be acted upon if the CPA has a current license that is in the process of being revoked by the department.**

**(f) The payment for enhanced supervision needs, as determined by the child's category of supervision established under sections 20 and 26 of this rule, will remain in effect while the request for review of the child's category of supervision is pending the result of the review. The child's category of supervision, as affirmed or revised by the department's local office director or designee or the chief probation officer or designee upon completion of the review, will be effective as of the date of the notice of the outcome of the review. Any payments made by the department after the effective date will be adjusted in accordance with the final approved category of supervision for the child.**

*(Department of Child Services; 465 IAC 2-17-31)*

### **465 IAC 2-17-32 Review of the child's category of supervision after the initial assessment has been completed**

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

**Sec. 32. (a) A CPA may request a review of the child's category of supervision at a critical case juncture or when the CPA reasonably believes there is relevant, new, or changed information about the child's supervisory needs that were not adequately addressed in the approved assessment tool or during discussions about the type of placement before the placement occurred. A CPA may request a review of the child's category of supervision when there are supervisory or behavioral concerns that are not adequately addressed by the approved assessment tool. Any change in the child's category of supervision must coincide with a newly completed approved assessment tool. Whether the child should be reassessed on the approved assessment tool is a decision made at the discretion of the department's local office director or designee or the chief probation officer or designee.**

**(b) The CPA may request review under this section not more than one (1) time in a six (6) month period that the child is in out-of-home placement.**

**(c) A request by a CPA for review of the child's category of supervision for reasons outlined in subsection (a) must be submitted**

**timely and in writing to the FCM or probation officer who manages the child's case.**

**(d) The request for review of the child's category of supervision shall be submitted in the form and manner specified by the department and shall include, but not be limited to, the following items:**

**(1) Identification of the child's current category of supervision.**

**(2) A clear, concise statement of the reasons for the requested change.**

**(3) A detailed statement of related information in support of the change.**

**An incomplete request for review of the child's category of supervision that does not include at least the items specified in this subsection cannot be accepted or processed.**

**(e) When a request for a review of the category of supervision that complies with subsection (d) is received, the FCM or probation officer will hold a meeting with the CPA and foster parent to discuss the needs of the child within fourteen (14) days of the request for review. The department's local office director or designee or the chief probation officer or designee must be in attendance at this meeting. Notice of the outcome of the review must be given by the department's local office director or designee or the chief probation officer or designee must be given, in writing, to the CPA within five (5) business days of the meeting.**

**(f) No request for review of the child's category of supervision will be acted upon if the CPA has a current license that is in the process of being revoked by the department.**

**(g) The payment for enhanced supervision needs, as determined by the child's category of supervision established under sections 20 and 26 of this rule or section 31 of this rule will remain in effect while the request for review of the child's category of supervision is pending the result of the review. The child's category of supervision, as affirmed or revised by the department's local office director or designee or the chief probation officer or designee upon completion of the review, will be effective as of the date of the notice of the outcome of the review. Any payments made by the department after the effective date will be adjusted in accordance with the final approved category of supervision for the child.**

*(Department of Child Services; 465 IAC 2-17-32)*

**Section 2. The payment amounts determined under this rule shall take effect no earlier than January 1, 2012.**

## Exhibit C

1. Methodology for determining excess capacity and how that will be applied: DCS will use a single year cost report, as opposed to multiple years. The following will apply to the single year cost report and will be further detailed in the Provider Manual and/or on the instructions for the cost report:
  - a. If a unit/cottage is inactive/idle, the licensed beds within that unit/cottage will not be included in determining excess capacity if the costs for such are not included on the annual cost report.
  - b. For a facility that is opened for a partial year, the partial year costs should be reported and the same percentage of the beds will be utilized in the calculation of excess capacity.
2. Definition of the categories of supervision CPA foster care: The categories of supervision will be set out in the Provider Manual. They will be related to the CANS categories and will be as follows:
  - a. Foster care (CANS category 1)
  - b. Foster care with services (CANS category 2)
  - c. Therapeutic (CANS category 3)
  - d. Therapeutic Plus (CANS category 4 or higher)
  - e. There may be additional categories specified in the Provider Manual.
3. Cost report form and how that will differ from the current IV-E cost report form:
  - a. DCS will utilize the IV-E cost report to set the cost based rates described in the rules. No other cost reports will be required.
  - b. DCS anticipates setting the following cost based rates for residential programs:
    - i. IV-E rate
    - ii. base rate (which will have additional non-IV-E items added to the IV-E rate), and
    - iii. education rate.
4. Assessment process: DCS will add to the CANS policy that in completing a CANS assessment on a child and his or her family, the FCM should first gather information from readily available sources, which may include the child, the family, the Court Appointed Special Advocate (CASA), Guardian Ad Litem (GAL), foster parents, service providers, the school, and others with relevant information.

5. Unbundling pursuant to the residential and CPA rate rule:
  - a. Residential providers and CPAs can collaborate with other providers to provide Medicaid services with reference to behavioral health services.
  - b. For Residential, DCS will authorize behavioral health services as part of the placement. An additional referral will not be needed. The "units" authorized will be governed by the contract.
  - c. For both CPAs and residential, the referral/authorization given at the time of placement authorizes the provider to provide the service. Providers do not have to wait until Medicaid approves units to start performing the services. If the child is not Medicaid eligible or Medicaid denies the approval service, then DCS will pay based on the initial referral.
  - d. For residential providers, educational services will have a separate cost based rate that is established through the IV-E cost report. This rate will be combined with other costs based rates established by the department to establish the payment rate. As to costs to comply with an IEP, those will be included on the cost report based on costs from the previous year in complying with IEPs.
6. DCS will pay CPAs for their foster parents' properly claimed excess travel and any other payments the foster parents are due to receive from DCS, as specified in Section 19 of the CPA rule.
7. DCS will amend the CPA licensing rule to have a caseload ratio that ranges from 1:8 to 1:12 for the enhanced supervision categories of care.