

**Economic Impact Statement**

LSA Document #07-540

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

This amendment makes two changes. First, it creates a corrective action plan sanction. Second, the amendment allows for the sanctioning of noncompliance with 42 U.S.C. 1396a(a)(68) False Claims Act employee education requirements ("the Act"), and it defines sanctions that the Office of Medicaid Policy and Planning will issue for noncompliance.

**Estimated Number of Small Businesses Affected**

Under the Act, the state Medicaid plan must require "any entity that receives or makes annual payments under the State plan of at least \$ 5,000,000" to follow certain requirements regarding the education of their employees, agents, and contractors with regard to federal and state false claims laws. In order for a business to be defined a small business under [IC 4-22-2.1-4](#), it must have "gross annual receipts of five million dollars (\$5,000,000) or less." Therefore, very few businesses could in fact be affected by this rule. The small business would need to have gross annual receipts of exactly \$5,000,000 in Medicaid payments, or be making less than \$5,000,000 but paying out more than \$5,000,000 in Medicaid payments. Currently, no such entity exists. However, all providers currently enrolled in the Medicaid program could be subject to a corrective action plan if the provider is found noncompliant with current state or federal Medicaid laws and regulations. Currently there are approximately 18,731 small businesses enrolled as Medicaid providers. Providers are not required to enroll in the state Medicaid program.

**Estimated Average Reporting, Record Keeping, and Administrative Costs**

The proposed rule does not require any annual reporting that is not currently required by federal law. Entity compliance with federal requirements and the state Medicaid plan are necessary in order for affected entities to receive reimbursement for health care services and items it provides. The rule requires a noncompliant entity to complete a corrective action plan within sixty (60) days detailing how it will come into compliance with state or federal requirements. If after the sixty (60) days the entity has not submitted a corrective action plan, the state may withhold payment to the entity or disenroll the entity. The proposed state rule will actually benefit small businesses by allowing them time to come into compliance with Medicaid law, rather than automatically penalizing the entity for its noncompliance. This rule will not require entities to do any special reporting; compliance with federal requirements is already checked during routine audits of entities currently conducted by the agency.

**Estimated Annual Fiscal Impact**

The proposed rule is expected to have a slight, difficult to quantify economic impact on small businesses. First, the corrective action plan sanction, as levied on providers for general noncompliance with federal or state Medicaid requirements, is fiscally less punitive than other current sanctions because it does not immediately place a provider's Medicaid reimbursement at risk. Second, given the relatively few (if any) small businesses that provisions requiring compliance with the Act will affect, the economic impact on all small businesses combined is expected to be insubstantial. The rule itself will not require any entity to create policies not already required under federal law or state Medicaid plan. However, the sanctions will reinforce that entities need to properly comply with federal law and the state Medicaid plan in order to be reimbursed for items and services it provides. Costs to the small businesses would likely come from the administrative time used gathering documentation during audits to show compliance with the law in order to avoid the proposed rule's sanctions. The proposed rule amendment does place reimbursement at risk, but only does so when an entity 1) is out of compliance with Medicaid requirements, 2) is asked to submit a corrective action plan, and 3) does not submit a corrective action detailing how the entity will come into compliance with current Medicaid law.

**Justification of Requirements**

This rule is necessary to ensure that entities that receive or make annual payments under the state plan of at least \$5,000,000 comply with requirements of the Act to maintain and distribute state and federal false claims act information to employees, agents, and contractors. The proposed rule gives entities the opportunity to create a corrective action plan if they are not in compliance, rather than automatically withholding payment after discovery of deficiency. The agency believes that the rule's risk of sanction will encourage quick and direct compliance with federal law. Also, the agency believes that by enacting the corrective action plan sanction for all Medicaid noncompliance issues, the agency can encourage compliance with state and federal regulations and a dialogue with providers that do want to comply with Medicaid regulatory scheme but are presently experiencing difficulty navigating all of the federal and state requirements.

**Regulatory Flexibility Analysis**

There is no less intrusive or costly alternative to achieve the purpose of this rule. The agency did not consider alternative sanctions for small businesses. The agency does not believe that there are any small businesses currently affected by the False Claims Act portion of the proposed regulation based on the state's definition of a small business and the definition of an entity required to comply with the federal requirements. The agency also believes that the rule should be consistent in its treatment of all entities so that auditors and compliance personnel can act on the rule in a reliable manner. Finally, the corrective action plan sanction, as levied on providers for general noncompliance with federal or state Medicaid requirements, is actually fiscally less punitive than other current sanctions because it does not immediately place a provider's Medicaid reimbursement at risk. As such, the agency believes the proposed rule to be reasonable and free of burdensome requirements and overly harsh sanctions.

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