

**Economic Impact Statement**  
LSA Document #07-875

**IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses****Description of the Rule**

This rule amendment makes the following changes to the existing rules:

1. Modifies the procedures, standards, and requirements regarding the use of restraint or seclusion, or the simultaneous use of restraint and seclusion, of consumers in a private mental health institution.
2. Adds definitions, revises existing definition, and makes nonsubstantive changes to clarify and update the existing rule.

The rule amendment makes the provisions of [440 IAC 1.5](#), regarding the use of restraint or seclusion, or the simultaneous use of restraint and seclusion, consistent with recent modifications to federal regulations on the same topic. Due to the changes in the federal regulations, the state rules are stricter than the federal regulations on this topic. If state rules or laws on a subject are stricter than federal regulations on the same time, a provider must comply with the stricter state requirements. The proposed rule amendment brings the state rules into line with the federal regulations. The Division of Mental Health and Addiction (DMHA) has received information from stakeholders indicating that they uniformly support the rule amendment for this reason.

**Impact on Small Businesses****1. Estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.**

The provisions of [IC 4-22-2.1-4](#) define a small business as any person, firm, corporation, limited liability company, partnership, or association that:

- (1) is actively engaged in business in Indiana and maintains its principal place of business in Indiana;
- (2) is independently owned and operated;
- (3) employs one hundred (100) or fewer full-time employees; and
- (4) has gross annual receipts of five million dollars (\$5,000,000) or less.

The DMHA licenses and regulates 19 private mental health institutions (PMHIs). Eleven of the 19 facilities are operated by community mental health centers and are publicly funded. Accordingly, those 11 facilities are not "independently owned and operated" as required under [IC 4-22-2.1-4\(2\)](#) in order to meet the definition of a "small business." It should be noted also that the DMHA receives financial audit information of those 11 community mental health centers; however, the financial information concerning the operation of the PMHIs is not segregated from the financial information of all other operations of the community mental health centers.

Regarding the remaining eight facilities, the DMHA does not receive financial information from those facilities, which are not legally required to provide the DMHA with such information. Therefore, the DMHA cannot determine whether the individual facilities in this group qualify as a "small business" under [IC 4-22-2.1-4\(4\)](#).

**2. Estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule amendment.**

The DMHA estimates that any small business will incur no additional costs to comply with the reporting requirements of this proposed rule amendment. Any changes in the reporting requirements in the proposed rule amendment are only to make those requirements more specific and clear. Under the current rule, providers are already required to report any consumer death to the DMHA. The changes in the proposed rule amendment apply to the provisions concerning the reporting requirements for a consumer death that occurs during or around the time the consumer is in restraint or seclusion, or simultaneous restraint and seclusion. In addition, any provider that participates in the state Medicaid program already must comply with these reporting requirements.

**3. Estimate of the total annual economic impact that compliance with the proposed rules will have on all small businesses subject to the rule.**

Since no small business will incur any additional cost to comply with this rule amendment, there is no negative annual economic impact on small businesses. In fact, the rule amendment should result in a lower cost for all providers for the following reason. Under the current rule, the face-to-face assessment one hour after the initiation of restraint or seclusion must be performed only by a physician or a licensed independent practitioner; however, under applicable federal regulations and the proposed rule amendment, the face-to-face assessment one hour after the initiation of restraint or seclusion may be performed by a physician, a licensed independent practitioner, a registered nurse, or a physician assistant. Allowing registered nurses or physician assistants to perform this assessment will result in a lower cost to providers than requiring the use only of physicians or licensed independent practitioners for this assessment.

**4. Statement justifying any requirement or cost that is imposed on small businesses by the rule; and not expressly required by the statute authorizing the agency to adopt the rule; or any other statute or any other state or federal law.**

The rule amendment imposes no additional cost or requirements on small businesses.

**5. Regulatory Flexibility Analysis**

Other factors considered:

**A. Establishment of less stringent compliance or reporting requirements for small businesses.**

The rule amendment has no impact on compliance or reporting requirements for small businesses. It should be noted that small businesses that participate in the state Medicaid program are already required under federal regulations to meet the compliance and reporting requirements contained in the rule amendment.

**B. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.**

The rule amendment has no impact on schedules or deadlines for compliance or reporting for small businesses. It should be noted that small businesses that participate in the state Medicaid program are already required under federal regulations to meet the schedules or deadlines for compliance and reporting requirements contained in the rule amendment.

**C. Consolidation or simplification of compliance or reporting requirements for small businesses.**

The rule amendment has no impact on compliance or reporting requirements for small businesses. It should be noted that small businesses that participate in the state Medicaid program are already required under federal regulations to meet the compliance and reporting requirements contained in the rule amendment.

**D. Establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.**

The rule amendment has no impact on performance standards for small businesses. It should be noted that small businesses that participate in the state Medicaid program are already required under federal regulations to meet the performance standards contained in the rule amendment.

**E. Exemption of small businesses from part or all of the requirements or costs imposed by the rule.**

The rule amendment imposes no additional requirements or costs on small businesses. It should be noted that small businesses that participate in the state Medicaid program are already required under federal regulations to meet the requirements and costs contained in the rule amendment.

**Conclusion**

The DMHA estimates that compliance with the proposed rule will not have a negative, annual economic impact on small businesses. In fact, as discussed above, the proposed rule is expected to reduce the operational costs for all providers, including small businesses.

*Posted: 05/28/2008 by Legislative Services Agency*

An [html](#) version of this document.