

Economic Impact Statement

LSA Document #10-416

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

The Indiana Department of Child Services ("DCS" or "department") must license all residential treatment service providers (provider) in the state of Indiana. Every provider in Indiana must be licensed by the department in accordance with state law in order for the department to recommend the placement of a child with a provider and pay for the costs of such placement. This rule establishes the process by which the department will determine the cost-based rates that will be paid to the provider for placements and includes the unbundling of specific components of the cost of providing care to children placed by DCS with a provider for residential treatment services (for example, maintenance, administration, behavioral health, education) to ensure an open and transparent rate setting process.

Economic Impact on Small Businesses

The department anticipates no additional costs to small business providers. All providers are already required to submit annual cost reports for the purpose of allowing DCS to determine the amounts that DCS can claim for reimbursement under Title IV-E of the federal Social Security Act (IV-E cost of care) on behalf of children who are eligible for assistance under that program. The cost reports will become the basis for the calculation of both DCS payments to the providers and IV-E claiming amounts based on the IV-E cost of care. For those providers that become eligible to bill Medicaid for behavioral health services, there may be some minimal increase in administrative costs associated with the separate invoicing of behavioral health services to Medicaid. However, these additional costs are reflected in the cost studies used to determine Medicaid rates. For those small business providers that cannot meet Medicaid eligibility standards, they can partner with community mental health centers or other providers for the provision of behavioral health services.

Estimated Number of Small Businesses Affected

[IC 4-22-2.1-4](#), which incorporates by reference [IC 5-28-2-6](#), defines a small business as a business entity that satisfies the following requirements:

- (1) On at least fifty percent (50%) of the working days of the business entity occurring during the preceding calendar year, the business entity employed not more than one hundred fifty (150) employees.
- (2) The majority of the employees of the business entity work in Indiana.

There are approximately 50 residential treatment service providers that meet the small business definition of [IC 4-22-2.1-4](#).

Estimate of the Average Annual Reporting, Record Keeping, and Other Administrative Costs That Small Businesses Will Incur to Comply with the Proposed Rule

The proposed rule has reporting, record keeping, and administrative requirements similar to the current process for rate setting affecting residential treatment services providers. Therefore, DCS estimates that the rule will not require small businesses to incur additional costs to comply with its provisions.

Estimate of the Total Annual Economic Impact That Compliance with the Proposed Rule Will Have on Small Businesses Subject to the Rule

The department anticipates no additional net costs to small business providers since all providers are already required to submit annual IV-E cost reports, which will become the basis for the calculation of rates. For those providers that become eligible to bill Medicaid for behavioral health services, there may be some minimal increase in administrative costs associated with the separate invoicing of behavioral health services to Medicaid. However, these additional costs are reflected in the cost studies used to determine Medicaid rates.

As payment rates reflect actual reasonable and prudent costs, some providers may see an increase in total revenue, all other things being equal, due to an increase in rates. Other providers may see a decline in total revenue, all other things being equal, due to a decrease in rates. At this time it is impossible for the department to calculate the actual impact on individual provider and aggregate provider revenues, but the anticipated change in aggregate revenue is not expected to be significant.

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 State or Federal Law

For those children eligible for federal IV-E funding, it is a federal requirement that the state of Indiana cover the reasonable IV-E cost of care for out-of-home placements. Hence, the department must have a rate setting

process that ensures that reasonable costs of residential facility placements are covered by provider rates.

On January 1, 2009, the state of Indiana assumed the fiscal responsibility for child welfare expenditures, including those for residential placements that were previously funded by county property tax levies. Before January 1, 2006, all rates and payments to residential treatment service providers were negotiated and determined by the individual county offices responsible for funding those payments. The department entered into uniform master contracts with all residential treatment services providers in Indiana beginning January 1, 2006, which included individual program payment rates for each provider in 2006 and a procedure for redetermination of payment rates applicable to subsequent calendar years. However, for most providers the payments in effect through calendar year 2009 payable by DCS under those contracts were based on the provider's requested adjustments of its previous rates. Inconsistencies among providers in their approaches to rate setting produced an extremely wide variation in rates across the state for the same or similar residential placements. Some residential rates may have been below the reasonable IV-E cost of care, while others appeared to be well above the reasonable IV-E cost of care. In 2009, DCS undertook a detailed analysis of provider costs and comparative rates charged by different providers for the same or similar residential treatment services. Based on that analysis, DCS notified the providers of the rates that it would accept for each provider beginning January 1, 2010. However, the 2009 rates have been continued for 2010 due to a lawsuit filed by the Indiana Association of Residential Child Care Agencies, Inc. (IARCCA) in the U.S. District Court that resulted in a preliminary injunction requiring DCS to continue in effect the 2009 payment rates pending further review of the rate setting process. This rate setting rule will ensure that all future residential rates cover the reasonable IV-E cost of care, not below and not in excess.

The proposed cost based approach will also unbundle into separate rates the various components of residential treatment services (for example, maintenance, administration, behavioral health, education). This will permit the department to draw down other sources of federal funding, such as Medicaid, to reduce the burden of child welfare costs on Indiana taxpayers. The department estimates that it will be able to claim up to \$18.4 million annually in new federal Medicaid reimbursement, which will displace state dollars, to the benefit of Indiana taxpayers without compromising the quantity and quality of behavioral health services. The proposed rule will be implemented to replace the existing annual rate setting process and will eliminate the perpetuation of mismatched rates and costs as well as the loss of federal funding.

Linking rates with costs through a cost-based rate setting process will ensure that necessary and appropriate services are being provided by our providers and that they are fairly compensated for the reasonable and prudent costs of providing those services. In effect, such an approach will protect providers, the department, and the children it serves by ensuring that rates provide the appropriate funding to providers to cover the necessary and prudent costs of caring for the children that the department serves.

Regulatory Flexibility Analysis

The department considered the following alternatives:

- (1) RFP process – would match supply with demand, but would not ensure that rates adequately cover the reasonable and prudent costs of serving the department's clients as required by the U.S. District Court preliminary injunction ruling in January 2010.
- (2) Negotiated rates – current process would not ensure that rates adequately cover the reasonable and prudent costs of serving the department's clients. Past attempts by the department to negotiate rates have failed. When the department was seeking to negotiate lower rates, the Federal District Court issued a preliminary injunction staying the reduced rates, essentially holding that the provisions and procedures in the department's contracts with residential treatment services providers for annual redetermination of payment rates are inadequate.

Under any alternative, rates must be unbundled to facilitate the drawdown of new federal funding.

Conclusion

The changes proposed will have insignificant financial effect on the operations of small businesses in Indiana.

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