

Notice of Public Hearing

LSA Document #10-417

Notice of Public Hearing

Under [IC 4-22-2-24](#), notice is hereby given that on September 24, 2010, at 2:00 p.m. EDT, at the Indiana Government Center South, 302 West Washington Street, Conference Center Rooms 1 and 2, Indianapolis, Indiana, the Department of Child Services will hold a public hearing on a proposed new rule, [465 IAC 2-17](#), to establish mechanisms and procedures 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 by the agency; and to describe outcome measures that the department may consider in contracting with child placing agencies for placement of children and provision of services.

The proposed rule provides for an annual public hearing and independent contractor review regarding the department's rate setting methodology for administrative payments, and an independent contractor study of reasonable costs of caring for a foster child in Indiana, based on requirements and guidelines applicable to Title IV-E of the federal Social Security Act. The contractor will construct a model of maintenance payments for foster children to inform the department in establishing appropriate rates. The rule also requires the provider agencies to submit annual cost reports and defines allowable and unallowable costs for purposes of administrative payments. It also requires providers to bill the Medicaid program separately for covered services to eligible children. It establishes a procedure for providers to request and receive a department administrative review of individual administrative payment rates that the department has approved, and a procedure for initial and periodic reviews of the category of supervision that the department has determined applicable to a child placed in foster care, for purposes of the appropriate maintenance payment rate for that child. This rule will establish a procedure for approval of payment rates and amounts among different child placing agency providers that is more uniform and consistent than the negotiation procedure currently in effect.

The department expects that this rule will not impose additional cost to providers for compliance with its provisions, as compared to the rate setting procedures and requirements currently in place.

In compliance with [IC 4-22-2-24\(d\)\(3\)](#), the department advises that it has consulted and utilized information from various sources, including, but not limited to, the following, in determining that the requirements imposed on its licensees by this rule are necessary and appropriate:

- (1) Title 42 United States Code Sections 672 and 675.
- (2) Guidance relating to allowable costs claimable for reimbursement under Title IV-E of the federal Social Security Act as contained in applicable sections of the Child Welfare Policy Manual published by the Children's Bureau of the United States Department of Health and Human Services.
- (3) Provisions of the federal Office of Management and Budget Circulars that explain or define reasonable and allowable costs reimbursable under federally assisted programs, codified at 2 CFR Part 225, 2 CFR Part 230, and 48 CFR Part 31 Section 201-3, and incorporated by reference in the proposed rule.
- (4) [405 IAC 21.5](#), relating to "Medicaid Rehabilitation Option Services".
- (5) The most recent available Child Welfare League of America Salary Study, published by CWLA Press, that contains a survey of job category salaries applicable to child placing agency providers covered by this rule.
- (6) Department of Child Services current and projected client to staff ratios contained in applicable licensing rules.
- (7) Report of the Children's Rights organization titled "Hitting the M.A.R.C. – Establishing Foster Care Minimum Adequate Rates for Children" (October 2007).
- (8) United States Department of Agriculture, Center for Nutrition Policy and Promotion, publication titled "Expenditures on Children by Families, 2009," Miscellaneous Publication Number 1528-2009 (June 2010).
- (9) Analysis of rates and related rules for setting rates in other states, prepared for the department by Public Consulting Group in a report titled "Contracted and Title IV-E Rate Setting Process – Cost Report Ratio Options".
- (10) Statutes and administrative rules relating to payment rates for comparable facilities and providers in other states, including but not limited to Illinois, Minnesota, Missouri, and Oregon.
- (11) Contracts signed by the department with child placing agencies as of December 2009 with an effective date of January 1, 2010. (These contracts have not been implemented because they required changes in child placing agency rates and payments in effect in 2009, and those changes were enjoined by the United States District Court, Southern District of Indiana, in the consolidated cases of C.H. et al. v. Payne, no. 1:09-cv-1574-SEB-JMS and IARCCA v. Indiana Department of Child Services, formerly no. 1:09-cv-1580-WTL-DML).
- (12) Powerpoint titled "Indiana Title IV-E Rate Setting Overview" and related cost report forms, practices, and

instructions.

(13) *Entry Granting a Preliminary Injunction, filed in the United States District Court, Southern District of Indiana on January 26, 2010, in the consolidated cases of C.H. et al. v. Payne, no. 1:09-cv-1574-SEB-JMS and IARCCA v. Indiana Department of Child Services, formerly no. 1:09-cv-1580-WTL-DML (published at 683 F.Supp.2d 865).*

(14) *Document titled "IARCCA's Response to Department of Child Services' 4-28-10 Draft Policies for Rate-Setting for Licensed Child Placing Agencies (LCPAs) and Residential Treatment Services Providers," prepared May 7, 2010 by Cathleen Graham, Executive Director.*

Copies of the proposed rule, and any documents described above that the department consulted relating to requirements imposed by this rule, may be inspected and copied at the offices of the department as stated below.

Any interested persons may attend the public hearing and offer comments on the proposed rule. Written statements are encouraged and preferred, and will be included in the hearing record without the necessity for personal attendance at the hearing. Written statements may be submitted before or at the time of the hearing. Questions, comments, or prehearing written statements may be forwarded to the mailing address or by e-mail as follows:

Mail address:

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Copies of these rules are now on file at the Indiana Government Center South, 302 West Washington Street, Room E306 and Legislative Services Agency, Indiana Government Center North, 100 North Senate Avenue, Room N201, Indianapolis, Indiana and are open for public inspection.

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