

Economic Impact Statement

LSA Document #10-245

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

IC 4-22-2.1-5(a) provides that an agency that intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses must prepare a statement that describes the annual economic impact of the rule on small businesses after the rule is fully implemented as described in IC 4-22-2.1-5(b). That statement must be submitted to the Indiana Economic Development Corporation (IEDC). The IEDC is required to review the rule and submit written comments to the agency not later than seven days before the public hearing.

The IDOI is amending 760 IAC 1-21 to better meet the statutory requirement that surcharge paid equal the actuarial risk to the Patient's Compensation Fund (PCF). Rule amendments finalized in 2007, in practice, imposed a greater financial burden on some health care providers than is currently actuarially appropriate, given changes to the medical professional liability market in the past three years. In other instances, the PCF has not been receiving adequate surcharge to cover the risk some providers bring to the PCF. IC 34-18-5-2 requires that the amount of the surcharge must be adequate for the payment of claims and expenses from the PCF and may not exceed the actuarial risk posed to the PCF. The proposed amendments will correct this situation.

The proposed rule will impact sole proprietor physicians who choose to participate in the PCF and desire PCF coverage for employees. The rule will also impact physician assistants and clinical nurse specialists, as well as health care providers meeting the definition of "ancillary provider". These amendments will only affect those health care providers choosing to participate in the PCF, as participation is voluntary and not mandatory.

Estimated Number of Small Businesses Affected:

The IDOI estimates that there are approximately 5,000 sole proprietor physicians practicing in Indiana. There are approximately 700 licensed physician assistants in Indiana, and approximately 458 clinical nurse specialists practicing in Indiana. There are approximately 1,371 ancillary providers currently participating in the PCF. It is unknown how many of these sole proprietor physicians, physician assistants, clinical nurse specialists, and ancillary providers meet the definition of "small business".

Estimated Administrative Costs Imposed on Small Businesses:

The proposed amendments clarify that PCF coverage will not be extended to employees of a physician who individually qualifies for PCF coverage. Physicians pay surcharge under 760 IAC 1-60 based on the individual's specialty. These rates were actuarially set to cover the PCF's risk for each individual physician only. Therefore, when a physician who is a sole proprietor wishes to participate in the PCF and also wants PCF coverage for his or her nurses and other employees, such coverage does not extend to the employees. To cover the employees, the sole proprietor physician could incorporate. The physician would then pay the physician specialty class surcharge to individually qualify and pay a separate surcharge to qualify the corporation. The physician's employees would be included in the corporation's qualification. The IDOI estimates that a sole proprietor physician would pay approximately \$100 in surcharge to qualify the corporation. This amounts to a \$500,000 potential impact to sole proprietor physicians electing to participate in the PCF.

The Department estimates that it would cost approximately \$1,000 for a sole proprietor physician to incorporate. This includes costs of filing with the Secretary of State and retaining legal counsel to assist with the filing. This amounts to a \$5,000,000 potential impact to sole proprietor physicians electing to participate in the PCF.

The amendments add physician assistants and clinical nurse specialists to the definition of independent ancillary provider. Physician assistants who choose to participate in the PCF must pay 35% of a specialty class 1 physician (currently \$2,648, or \$926.80 per physician assistant). The total potential annual impact to physician assistants is \$648,760. Clinical nurse specialists who choose to participate in the PCF must also pay 35% of a specialty class 1 physician (currently \$2,648, or \$926.80 per clinical nurse specialist). The total potential annual impact to clinical nurse specialists is \$424,474.40. Again, these costs are not imposed upon physician assistants and clinical nurse specialists because they are not required to participate in the PCF.

The amendments also reduce the surcharge owed to the PCF by an ancillary provider from 110% to 100% of the premium charged by the insurer. This will result in a \$2,500,000 cost reduction to ancillary providers in the first year.

Estimated Total Annual Economic Impact on Small Businesses:

The total annual economic impact on small businesses is unknown. There is the potential of a \$5,000,000 impact to sole proprietor physicians who choose to incorporate; however, this would not be an annual cost. The total annual impact to sole proprietor physicians, in addition to the one-time potential cost associated with incorporation, is \$500,000. The total annual impact to physician assistants choosing to participate in the PCF is \$648,760. The total annual impact to clinical nurse specialists choosing to participate in the PCF is \$424,474.40.

Ancillary providers will enjoy a \$2,500,000 cost reduction in the first year.

Justification of Requirements or Costs:

[IC 34-18-5-2](#) requires the amount of the surcharge to be determined based upon actuarial principles and actuarial studies. The surcharge must be adequate for the payment of claims and expenses from the PCF. The PCF's actuaries have determined that these amendments are necessary.

Regulatory Flexibility Analysis:

Under [IC 34-18-5-2](#), these amendments must be accomplished by rule. The amount of the surcharge must be adequate for the payment of claims and expenses from the PCF and may not exceed the actuarial risk posed to the PCF. There are no less intrusive or less costly alternative methods for achieving the purposes of the proposed rule.

Posted: 10/13/2010 by Legislative Services Agency

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