

Economic Impact Statement

LSA Document #19-685

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

This rule is being promulgated to allow the Indiana State Department of Health (ISDH) to implement the certificate of need program for comprehensive care health facilities. The majority of the scheme for this program is set forth in statute and is outside of ISDH's rulemaking authority. The cost from the ISDH rule is the application fee which is being set at \$5,000 per applicant to defray the cost of administering the program.

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

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 proceeding 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 550 comprehensive care health facilities in Indiana. Approximately 20 of those could meet the definition of a small business as described above.

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

Small businesses will not have annual reporting, record keeping, or other administrative costs to comply with this rule. Small businesses will only incur costs when attempting to obtain a certificate of need which requires a \$5,000 application fee.

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

The only economic impact on small businesses from this rule will be the \$5,000 application fee if the small business seeks a certificate of need. All other costs associated with the implementation of this program are based on the statutory scheme. This rule is only implementing what the legislature established. Most comprehensive care facilities will have no costs to comply with this rule because the ISDH does not expect many applications for a certificate of need each year.

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 state or federal law.

ISDH, after consulting with the Indiana Health Care Association, the Hoosier Owners and Providers for the Elderly (HOPE) and Leading Age Indiana, has decided to set the application fee at \$5,000. \$5,000 would help defray the costs of implementing the program at ISDH, but is not too high to be prohibitive to applicants.

The largest cost for ISDH in administering this program is the staff time needed to operate the program. The work includes:

- Coordinating with FSSA/Myers and Stauffer to ensure that ISDH has proper calculations completed in a timely fashion;
- Ensuring that all information is posted online as required by the law;
- Responding to inquiries from the public/regulated entities to help with questions about navigating the certificate of need program, whether an application is ultimately submitted or not;
- Reviewing applications for completeness;
- Determining whether the certificate is necessary per the law;
- Ensuring that applications are published timely;
- Collecting any public comments;
- If necessary, performing a comparative review;
- If necessary, administrative litigation costs if a decision is appealed.

It is difficult to identify the exact cost of administration of the program because we do not know exactly how much staff time will be needed to operate this program. ISDH has one full time employee who will spend a portion of his time dedicated to administering this program with a combined annual salary and fringe cost of approximately \$44,700. In addition to this employee administering the program, other staff will have to spend various amounts of time helping to administer the program as issues arise, including the Assistant Commissioner responsible for this program.

ISDH considered the cost to the regulated entities when setting this fee. One important contextual factor for ISDH is that the projects subject to this regulation will likely cost millions of dollars, making the \$5,000 a relatively small portion of the cost to the regulated entities for these projects.

5. Regulatory Flexibility Analysis

Other factors considered:

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

This rule does not require compliance or reporting requirements unless a small business is seeking a certificate of need. Those requirements are established in legislation so no alternatives are possible.

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

This rule does not require compliance or reporting requirements unless a small business is seeking a certificate of need. Those requirements are established in legislation so no alternatives are possible.

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

This rule does not require compliance or reporting requirements unless a small business is seeking a certificate of need. Those requirements are established in legislation so no alternatives are possible.

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

ISDH cannot establish any other standards for small businesses because they are set through statute.

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

ISDH cannot exempt small businesses from the requirements of this program because they are set by statute. The only cost within ISDH's discretion is the application fee. The application fee is meant to defray the costs of administration of the program. The work of the program will be the same irrespective of the size of the business, so the fee is the same for all applicants.

Conclusion

The majority of costs associated with compliance with this rule are set forth in statute and not by ISDH. The only cost set by ISDH is the application fee which is \$5,000 per application. This fee is necessary to defray the costs of administering the certificate of need program.

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