

Economic Impact Statement

LSA Document #12-404

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

Description of Rule

This rule codifies in one location in a separate article of the Indiana Administrative Code (IAC) procedures currently in use by the Department of Child Services (DCS) to conduct administrative hearings requested by individuals or entities affected by certain determinations made by DCS. The hearings to which these procedures apply are required by current state or federal statutes or rules. The subjects included are (1) substantiated reports of child abuse or neglect that are entered into the child protection index (IC 31-33-26-9); (2) decisions concerning eligibility, payment amounts and expense reimbursements, modification or termination of periodic payments, or continuation of payments for youth over age 18 under certain conditions, under the adoption assistance and kinship guardianship assistance programs supported through Title IV-E of the federal Social Security Act (42 U.S.C. 673 and 45 CFR 205.10); (3) determinations concerning certain payment rates and other payments for services provided to children placed by DCS with residential treatment services providers or licensed child placing agencies (465 IAC 2-16-27 and 465 IAC 2-17-28); (4) certain statutory procedures for enforcement of child support obligations through state income tax refund interception, income withholding orders, license suspensions or other sanctions, and other methods provided by law (IC 6-8.1-9.5-7, IC 31-16-15-4.3, IC 31-25-4-31, IC 31-25-4-32, IC 31-25-4-33); (5) distribution of child support collections where the obligee has received state funded public assistance (IC 31-25-4-26); and (6) denial or revocation of licenses required to be issued by DCS for operation of residential facilities for children, including child caring institutions (IC 31-27-3-11, -20), foster family homes (IC 31-27-4-13, -23), group homes for children (IC 31-27-5-12, -20), and child placing agencies (IC 31-27-6-8, -17). The rule also codifies administrative review procedures that DCS currently provides before a hearing is requested, for child abuse or neglect determinations and reviewable determinations under the adoption assistance and kinship guardianship assistance programs. It reaffirms by reference the current administrative review procedures applicable to service provider rate or payment determinations under 465 IAC 2-16-26 and 465 IAC 2-17-27.

Economic Impact on Small Businesses

DCS expects that nothing in this rule will impose additional costs on small businesses, as defined in IC 5-28-2-6. First, the procedures described in the rule are already in place through DCS policy and practice, and the hearing procedures reflect current statutory requirements. Second, persons or entities affected by decisions to which the procedures apply are not required to utilize any of the procedures. They may elect to use the available procedures to obtain reconsideration through agency reviews or due process hearings, in regard to decisions that they believe adversely affect their businesses. Therefore, any additional costs resulting from provision of new information to DCS for administrative reviews requested, or

presentation of evidence at administrative hearings, would be incurred only as a result of a cost-benefit analysis by the entity, as applied to the individual decision that could be modified or reversed based on the evidence or information assembled and presented for the particular review or hearing.

Estimated Number of Small Businesses Affected (IC 4-22-2.1-5(a)(1))

There is no statutory definition of the term “business entity” as used in IC 5-28-2-6. For purposes of this EIS, DCS assumes that it does not include an individual with respect to an activity that is not intended to produce income or constitute an occupation, or income producing activity in the individual’s capacity as an employee of another person or entity. DCS further assumes that it may include an organization or entity that receives revenue from provision of goods or services to DCS, DCS clients, certain classes of individuals or the public, whether or not the organization is a nonprofit entity. It may also include an individual who is the sole or part owner of such an entity or income producing activity.

Based on these assumptions, the following rule categories may affect small businesses as defined in IC 5-28-2-6. For purposes of the estimated numbers for each listed category, we assume that all affected business entities meet the conditions specified in subdivisions (1) and (2) of the statute, unless otherwise stated based on information received as indicated.

(1) Child abuse or neglect determinations. An identified perpetrator must be a child’s parent, guardian, or custodian, except for certain sex offenses that could not be committed by a business entity. A child’s parent or guardian, as such, is not a business entity. A “custodian” as defined by IC 31-9-2-31(b) could include any of the following possible business entities:

(a) a residential child care facility required to be licensed under IC 31-27-3 (child caring institutions and private secure facilities) or IC 31-27-5 (group homes for children). As of August 1, 2012, there are 52 child caring institutions, 35 private secure facilities, and 69 group homes, that are licensed under IC 31-27. In practice, most substantiated abuse or neglect determinations name individuals rather than agencies or facilities. Also, several agencies operate more than one licensed facility, so the total number of small business entities in this category is less than the total number of licenses.

(b) a child placing agency required to be licensed under IC 31-27-3-6. As of August 1, 2012, there are 76 licensed child placing agencies in Indiana. Some of those agencies limit their activities to placement of children with adoptive families. Others place children in foster homes on behalf of DCS and supervise foster family homes that are licensed by DCS under IC 31-27-4, providing support and services to those families and the children placed with them. As of August 1, 2012, there are 5,196 licensed foster family homes in Indiana. That number includes both homes supervised directly by DCS local offices and homes supervised by licensed child placing agencies. We do not consider a foster family home to be a business entity, since the payments they receive from either DCS or the supervising agency are intended to cover only specified costs of caring for the children placed in those homes as wards of DCS.

(c) a child care center, defined in IC 12-7-2-28.4, licensed by the FSSA Division of Family Resources (DFR) under IC 12-17.2-4 to provide day care for children. As of August 1, 2012, there are 595 licensed child care centers in Indiana.

(d) a child care home, defined in IC 12-7-2-28.6, licensed by DFR under IC 12-17.2-5 to provide day care for six or more children unrelated to the licensee. As of August 1, 2012, there are 2,875 licensed child care homes in Indiana.

(e) an owner or operator of a child care ministry, defined in IC 12-7-2-28.8, registered with DFR under IC 12-17.2-6 as exempt from licensing requirements. As of August 1, 2012, there are 719 registered child care ministries in Indiana.

(f) an owner or operator of a home that provides day care for five or fewer children unrelated to the homeowner, who is not required to be licensed as a child care home and who receives payment through the federal child care and development fund (CCDF), as defined in IC 12-7-2-149.1(4) by reference to IC 12-17.2-3.5. As of August 1, 2012, there are 432 unlicensed CCDF eligible homes in Indiana.

(g) a child caregiver, as defined in IC 31-9-2-16.4, who receives more than \$2,000 in annual compensation for providing care and supervision of children at a residence other than the child's home. Since these persons are unregulated and not required to register with any state agency, there is no feasible way to determine or estimate the number of current child caregivers in Indiana.

(h) an owner or operator of a home, center, or facility that is the location of a program that provides child care for migrant children, and is exempt from licensing under IC 12-17.2-2-8(6). At the present time this program is operated at eight locations in Indiana by a single agency whose main office is in Laredo, Texas. The program serves approximately 400 children on a seasonal basis and employs more than 150 individuals in Indiana during the time it operates the program. Therefore, this category does not currently affect a small business entity, as defined in IC 5-28-2-6.

The statutory definition of "custodian" for purposes of child abuse or neglect assessments also includes (A) any person with whom a child resides; (B) any person responsible for care, supervision, or welfare of children as a director, manager, supervisor, employee, or volunteer at a licensed home, center, or facility described in categories (a) through (d) above, or at a public or nonpublic school; (C) a member of the household of a child's noncustodial parent; and (D) any individual who has, or intends to have, direct contact with a child for care and supervision, on a regular and continuing basis. We do not consider any of those persons to be a business entity, within the definition of IC 5-28-2-6.

Any small business entity included in one of the above-described categories is affected by the proposed rule administrative review and hearing procedures only if DCS receives a report alleging possible child abuse neglect and, upon completion of its assessment of the report allegations, substantiates child abuse or neglect against the entity or any of its staff. In

that event, the rule provides procedures for the identified perpetrator of abuse or neglect to appeal the DCS staff determination. If the determination names an employee or volunteer of a business entity other than the owner or operator of the business, the rule procedures would not affect the business entity if the employee or volunteer resigns or is terminated from any position involving contact with children.

(2) Certain determinations under the Indiana adoption assistance program or Indiana guardianship assistance program as described in IC 31-9-2-17.8(1)(E) or IC 31-19-26.5. Those determinations affect individuals who are applicants or recipients of financial assistance under those programs. Those individuals would not be considered business entities.

(3) Determinations regarding rates or amounts payable to residential treatment services providers or licensed child placing agencies for services provided to or for the benefit of children who are wards of DCS. Those determinations and procedures are described in existing DCS rules 465 IAC 2-16 and 465 IAC 2-17. The proposed rule incorporates by reference the administrative review and hearing procedures described in those rules, with no substantive changes. The number of entities affected by those rules, in relation to rate determinations made for calendar year 2012, are stated below, based on the number of agencies that submitted cost reports to DCS in 2011 for determination and approval of 2012 payment rates:

- (a) Residential treatment services providers, including child caring institutions, private secure facilities, and group homes licensed under IC 31-27-3 or IC 31-27-5 = 91
- (b) Child placing agencies licensed under IC 31-27-6 = 43

(4) Child support obligors subject to certain enforcement procedures initiated by the DCS Child Support Bureau, as provided by an applicable statute. A child support obligor would be an individual who is not a business entity.

(5) Child support obligees or beneficiaries who have received state funded public assistance under the TANF program. A child support beneficiary would be an individual who is not a business entity.

(6) License applicants or existing licensees under any provision of IC 31-27, if DCS has denied approval of an application or initiated revocation of an existing license. The number of existing licensees in each licensing category other than foster family homes, as of August 1, 2012, is stated in subdivision (1) (a) and (b) above. The number of new or renewal license applications in those categories, submitted to DCS in a period of one year, is approximately 60.

Estimate of average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule (IC 4-22-2.1-5(a)(2))

The proposed rule has no reporting or record keeping requirements. Administrative costs would be incurred only if the small business is affected by a DCS determination to which the administrative review or hearing procedures apply, and elects to use those available procedures to present new facts or arguments for a change in the DCS determination that the small business believes has an adverse effect on its operations. The hearing procedures are

required by statute or existing rules, and the review procedures should reduce administrative costs in many cases by resolving the disputed matter without the formality and expense associated with a hearing. For example, recent experience with the review and appeal procedures under the rate rules applicable to the residential treatment services providers and child placing agencies, as implemented for the 2012 payment rate determinations, showed that a substantial majority of the disputed issues were resolved through the informal administrative reviews, substantially reducing both the administrative costs of appeal hearings and the time otherwise required to reach a mutually satisfactory agreement regarding the rates approved for current monthly invoicing.

Estimate of total economic impact that compliance with the proposed rule will have on small businesses subject to the rule (IC 4-22-2.1-5(a)(3))

The proposed rule will not impose any additional economic impact on small businesses to which it applies, because it simply codifies procedures that are currently in place pursuant to department policies adopted to comply with current statutory requirements concerning availability of administrative appeal procedures.

Statement justifying any requirement or cost 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 (IC 4-22-2.1-5(a)(4))

The administrative hearings rule simply specifies or clarifies procedures for conducting hearings on the subjects for which the availability of a fair hearing is required by current state or federal law, as outlined in the Description of Rule section of this EIS. The administrative review rule that is provided for certain categories of determinations before an administrative hearing can be requested will likely reduce costs for small businesses and expedite final decisions, regarding issues or disputes that can be resolved informally without the need for an evidentiary hearing.

Regulatory flexibility analysis (IC 4-22-2.1-5(a)(5))

The department has not engaged in the analysis of alternative methods of achieving the purpose of the proposed rule, described in this subdivision of the statute, because the methods of minimizing economic impact described in clauses 5(A) through 5(E) do not apply to the subject matter of this proposed rule. As stated above, all the administrative hearings described in the rule are required by existing statutes or rules. The department believes that the pre-hearing administrative review procedures that can be utilized consistent with the applicable statutory hearing requirements provide the only feasible method to minimize the time and expense otherwise required for formal adjudication through an evidentiary hearing.

The administrative review proposed rule does not apply to license revocations because the applicable statutes provide for an informal meeting with the department before a hearing is scheduled, if requested by the business or person affected by the adverse licensing decision. IC 31-27-3-19; IC 31-27-4-22; IC 31-27-5-19; IC 31-27-6-16. The licensing process under the

department's procedures for processing applications under the applicable rule in 465 IAC 2 provide ample opportunity for informal discussions with DCS licensing staff of any issues relating to compliance with the applicable licensing requirements, before a denial decision concerning a license application is issued. Hearings relating to child support enforcement or distribution of collections, to which the administrative reviews proposed rule does not apply, do not affect small businesses.

Conclusion

For the reasons stated above, the proposed rule when effective will have little or no financial or economic effect on the operations of small businesses in Indiana.