



30 South Meridian Street, Suite 300
Indianapolis, Indiana 46204-2759
Telephone: (317) 232-3955
Facsimile: (317) 232-7655
Web Site: <http://www.in.gov/dfi>

June 21, 2019

Migration of all CPAP (Civil Proceeding Advance Payments) provisions from the Indiana Uniform Consumer Credit Code (IC 24-4.5) into the CPAP Act (IC § 24-12)

To: Civil Proceeding Advance Payments (CPAP) Providers
Re: House Enrolled Act 1447
From: Lyndsay H. Miller, Acting Deputy Director Consumer Credit Division & General Counsel

[HEA 1447](#) was signed by the Governor into Public Law 176 on May 1, 2019 and becomes *effective July 1, 2019*. In order to provide regulatory clarity and transparency to the CPAP industry, all provisions applicable to CPAP, including licensing, have been migrated out of the Indiana Uniform Consumer Credit Code (Ind. Code § 24-4.5) and into the CPAP Act (Ind. Code § 24-12) by this new law. This letter outlines the changes that will result.

While this publication is intended to provide the CPAP industry with an overview of the pertinent legislation recently enacted, businesses are encouraged to review the new law in detail, and seek counsel with questions regarding how the new statutory provisions may impact its business.

CURRENT LAW IN EFFECT THROUGH JUNE 30, 2019

All current policies, procedures and application will remain in effect through June 30, 2019.

LAW IN EFFECT AS OF JULY 1, 2019

The vast majority of the statutory changes represent a migration of the statute in effect under the IUCCC into the CPAP Act. However, some substantive items of clarification and modernizations to bring the CPAP Act in line with other Titles administered by the Department were also made.

NEW STATUTES

The following statutes will be new additions to the CPAP Act:

IC 24-12-1-0.5: NEW definitions of “civil proceeding advance payment transaction” or “CPAP transaction”
IC 24-12-1-1: amends definitions of “civil proceeding”; “CPAP contract”; “CPAP provider”; “consumer claimant”; “Funded Amount”; adds definitions of “Department”; “Director”; “NMLSR”; “regularly engaged”; “Unique Identifier”
IC 24-12-4.5: NEW chapter on “Charges”
IC 24-12-9-4: NEW designation of NMLSR for license applications and renewals
IC 24-12-9-5; IC 24-12-9-6; IC 24-12-9-7; IC 24-12-9-8; IC 24-12-9-9: NEW licensing application and associated provisions

NEW PROVISIONS

1. The term “funded amount” is now the required designated term to be used in a CPAP contract (IC 24-12-1-1(10) and IC 24-12-1(1)(A)).

2. A new “regularly engaged” standard has been added specific to the CPAP industry with respect to the number of transactions undertaken by an entity in a given year that would require it to be licensed with the Department. If a CPAP Provider enters into CPAP transactions more than fifteen (15) times in the preceding calendar year or enters into or will enter into CPAP transactions more than fifteen (15) times in the current calendar year, the CPAP Provider is considered “regularly engaged” for the purpose of triggering the requirement to hold a CPAP license (IC 24-12-1-1(13)).

3. The CPAP contract must contain in bold font contained within a box the right of rescission information required by statute (IC 24-12-2-1).

4. A new section on “Charges” (IC 24-12-4.5), which provides:

Chapter 4.5. Charges

Sec. 1. This chapter applies to a CPAP transaction offered or entered into after June 30, 2016.

Sec. 2. (a) With respect to a CPAP transaction, a CPAP provider may impose the following:

(1) A fee that is:

(A) calculated at an annual rate that does not exceed thirty-six percent (36%) of the funded amount; and

(B) earned at consummation and each year after consummation on the anniversary of the funding date, in the case of a CPAP transaction offered or entered into after June 30, 2019.

(2) A servicing charge that is:

(A) calculated at an annual rate that does not exceed seven percent (7%) of the funded amount; and

(B) earned at consummation and each year after consummation on the anniversary of the funding date, in the case of a CPAP transaction offered or entered into after June 30, 2019.

(3) With respect to any one (1) civil proceeding, total charges that do not exceed five hundred dollars (\$500) for obtaining and preparing documents, in the case of a CPAP transaction offered or entered into after June 30, 2019.

(4) The following with respect to a CPAP transaction offered or entered into after June 30, 2016, and before July 1, 2019:

(A) If the funded amount of the CPAP transaction is less than five thousand dollars (\$5,000), a one (1) time charge that does not exceed two hundred fifty dollars (\$250) for obtaining and preparing documents.

(B) If the funded amount of the CPAP transaction is at least five thousand dollars (\$5,000), a one (1) time charge that does not exceed five hundred dollars (\$500) for obtaining and preparing documents.

(b) A CPAP provider may not assess, or collect from the consumer claimant, any fee or charge not otherwise permitted under this chapter in connection with a CPAP transaction. The fees and charges permitted under this chapter are not subject to refund or rebate.

5. New licensing provisions contained in IC 24-12-9-5; IC 24-12-9-6; IC 24-12-9-7; IC 24-12-9-8; IC 24-12-9-9; IC 24-12-9-9. The application provisions are essentially identical to the licensing provisions previously imposed on CPAP applicants under IC 24-4.5. A CPAP license must be renewed no later than December 31 of each calendar year.

6. New provisions concerning maintaining records in conformity with United States generally accepted accounting principles and practices, and general notification requirements to the Department of certain corporate change

information, as well as change of control. IC 24-12-9-11 and -12. These provisions are essentially identical to the provisions previously imposed on licensed CPAP Providers under IC 24-4.5.

NMLSR

A new statutory section has been added that provides the Department the ability to designate the Nationwide Multistate Licensing System and Registry (NMLSR) as the designated conduit by which a CPAP Provider may apply to the Department for a new CPAP license. As of the date of this advisory, there are no immediate future plans to require CPAP Providers to apply for a license through the NMLSR. Any future intention to require CPAP Applicants to apply for an Indiana CPAP License through the NMLSR will be announced well in advance of a given roll-out date. In the meantime, all new CPAP applicants should continue to submit an application to the Department as instructed on the DFI website with a paper CPAP application (IC 24-12-9-4).

SURETY BOND

A new section has been added under IC 24-12-9-8 providing the Department with the ability to impose a surety bond requirement on a licensed CPAP Provider. This provision is essentially the same as it was previously applicable under IC 24-4.5, reflecting that the Department has the discretion to impose up to a \$50,000 bond requirement. The Department does not currently require licensed CPAP Providers or new CPAP Provider applicants to pledge a bond.

CURRENT CPAP LICENSEES AND NEW CPAP APPLICANTS

While the laws pertaining to CPAP licensing will now be contained in IC 24-12, all CPAP Providers already licensed with the Department are still considered licensed, and will not be required to reapply for a new license under the new licensing regime. Currently, the application for a consumer loan license and a CPAP license remain combined; the Department is currently working on an updated CPAP licensing application under the new licensing statutes which we anticipate to be available soon, but which may not be available until after July 1. New applicants wishing to apply prior to publication of the standalone CPAP license application may continue to use the combined form until such time as the updated application form is made available.

If you have any questions, please contact the Department.

Department of Financial Institutions
Consumer Credit Division
317-232-3955
dfilicensing@dfi.in.gov