

Regulatory Analysis
For Home Care Placement Agency Penalty Rule

TITLE 610 Department of Labor
LSA Document #25-160

I. Description of Rule

a. History and Background of the Rule

HEA 1623 was passed by the Indiana legislature in 2023 which required, among other things, that the Indiana Department of Labor (IDOL) promulgate rules describing how certain civil penalties are calculated. A maximum penalty that may be assessed against a placement agency of home care service workers who is in violation of statutory requirements is set by statute found in IC 22-1-5-19, but the IDOL has never assessed any such penalty under that statute, having never received any complaint to investigate. The IDOL is proposing a new rule so that if any complaint is received and investigated in the future, the IDOL and the regulated community will have a rule that describes the penalty that must be assessed.

b. Scope of the Rule

There is no existing rule that addresses civil penalties assessed under IC 22-1-5-19. This proposed rule only seeks to promulgate a fixed penalty amount for violations described in IC 22-1-5-19 to comply with Indiana law.

c. Statement of Need

There is no immediate need for the rule since no penalty has ever been assessed by the IDOL under IC 22-1-5-19 since the law was passed in 2005. However, since the requirements of IC 22-1-5 et seq. deal with potentially vulnerable people in a personal setting and involve sensitive information, the IDOL believes that if it ever investigates a complaint under IC 22-1-5-18 and determines the law has been violated, it should have a rule that allows it to assess the maximum penalty allowed under the statute to comply with the law.

d. Statutory Authority for the Proposed Rule

IC 22-1-1-11 gives the Commissioner general rule making authority and IC 22-1-5-19 gives the Commissioner authority to assess civil penalties for the violations stated. IC 4-22-2-19.6 requires the proposed rule for how to determine said penalties.

e. Fees, Fines, and Civil Penalties

The proposed rule does not add or increase any civil penalties. Although no penalties have previously been assessed, that is only because no violations have ever been investigated. The proposed rule will just ensure that any civil penalties assessed for violations in the future will comply with the new law. The proposed rule clarifies the amount of any penalty assessed, but does not create any additional burden of compliance for constituents.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule

The anticipated effective date of the proposed rule is by June 30, 2025.

b. Estimated Fiscal Impact on State and Local Government

The proposed rule does not impact expenditures or revenues of state agencies or local government. The ability for the IDOL to assess a penalty “not to exceed one thousand dollars (\$1,000) against a placement agency” has been in place for almost twenty years without being utilized. Therefore, although the IDOL could still assess a penalty in the future, the estimated annual impact is still zero.

c. Sources of Expenditures or Revenues Affected by the Rule

If the IDOL ever assesses a penalty under this proposed rule, the penalty would be paid by a private entity into the state general fund.

III. Impacted Parties

This rule is being proposed to comply with HEA 1623, so it does not create a new impact on any business. It is also uncertain as to how many private placement agencies exist in the state that may be subject to the proposed rule. The Department of Workforce Development confirmed that there is no industry code that is specific to home care placement agencies, but they may be part of a larger industry code for Temporary Help Services. There are currently only fifty-nine employers in the state in that industry code that may be used as a reference to show how few employers may be affected by this rule. Likewise, since the IDOL has not received or investigated any complaints against any such placement agency since the law was passed in 2005, it may also be assumed that the number of impacted parties is probably very few.

IV. Changes in Proposed Rule

There is no existing rule that is being changed; the proposed rule is new. A maximum penalty has been set by statute since 2005, but no penalty has ever been assessed because the IDOL has never received a complaint or otherwise investigated a violation under IC 22-1-5-18. The new proposed rule contains the following sections:

610 IAC 12-1-1	Adds a statement of applicability that the definitions apply throughout the article.
610 IAC 12-1-2	Adds the definition of “commissioner” as used in this new rule.
610 IAC 12-1-3	Adds the definition of “consumer notice” as used in this new rule.
610 IAC 12-1-4	Adds the definition of “department” as used in this new rule.
610 IAC 12-1-5	Adds the definition of “investigation” as used in this new rule.
610 IAC 12-1-6	Adds the definition of “placement agency” as used in this new rule.

610 IAC 12-1-7	Adds the definition of “worker notice” as used in this new rule.
610 IAC 12-2-1	Adds a fixed penalty assessment of \$1,000 for violations of IC 22-1-5-19. Also adds a permissible discretionary reduction by the commissioner.

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule

This is a new rule being proposed for the purpose of complying with HEA 1623. There is no new benefit. If the IDOL ever assesses a penalty under IC 22-1-5-19, the penalty amount will now be a fixed amount, providing certainty to the regulated community.

b. Estimate of Secondary or Indirect Benefits of the Rule

There are no secondary or indirect benefits of the rule.

c. Estimate of Any Cost Savings to Regulated Industries

There are no cost savings to regulated industries.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities

This is a new rule being proposed for the purpose of complying with HEA 1623, but assessment of a maximum penalty for non-compliance has been in the law since it was enacted in 2005. This rule simply fixes the amount of the penalty and there are no new costs of compliance for regulated entities.

b. Estimate of Administrative Expenses Imposed by the Rules

There are no estimated administrative expenses imposed by the proposed rule.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6

The agency has considered the following:

1. Whether the violation has a major or minor impact on the health, safety, or welfare of a person, the health or safety of animals or natural resources, or other facts set forth in the agency's rule:

Violations of the notice requirements set forth in IC 22-1-5-13 and 16 could have a major impact on the health, safety, or welfare of the worker or consumer in different ways. There could be negative repercussions if the consumer does not receive notice that the placement agency is responsible for providing a criminal history check and a worker with a criminal history is placed in the consumer's home. There could also be a potential negative financial impact for either the consumer or worker if they don't understand who is responsible for the worker's wages, taxes, Social Security and Medicare

contributions, unemployment contributions, and worker's compensation insurance premiums.

2. The number of previous violations committed by the offender of laws, rules, or programs administered by the agency:

Since it appears that no complaints have been filed with the IDOL since the law was passed in 2005, we do not have a history of previous violations. However, due to the impact described above and the personal nature of this sort of work, the IDOL believes that assessing the maximum penalty regardless of circumstances is appropriate.

3. The need for deterrence of future violations:

The IDOL believes that assessing the maximum penalty amount allowed by statute will provide the needed deterrence of future violations.

4. Whether the conduct, if proved beyond a reasonable doubt, would constitute a criminal offense, and the level of penalty set by law for the criminal offense:

Nowhere in IC 22-1-5 does it mention any criminal offense for failing to provide notice as stated in Section 19. However, the penalty authorized is explicitly described as a "civil penalty."

VII. Sources of Information

a. Independent Verifications or Studies

Due to the nature of this proposed rule as previously described, there were no independent verifications or studies used or needed.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits

Due to the nature of this proposed rule as previously described, there were no sources relied upon.

VIII. Regulatory Analysis

This proposed rule does not change any cost or benefit to anyone or any entity and is simply being proposed to comply with the law by stating a fixed amount of any penalty assessed under IC 22-1-5-19.

IX. Contact Information of Staff to Answer Substantive Questions

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Additional Information for OMB and SBA Review

X. Redline Draft of Proposed Rules

The proposed rule is provided in a separate Word file. It is not redlined because there is no existing rule being changed. It will be a new rule.

XI. Resubmission Information (if applicable)

This is an initial submission. There is no resubmission.