

Proposed Rules

TITLE 10 OFFICE OF ATTORNEY GENERAL FOR THE STATE

Proposed Rule

LSA Document #01-264

DIGEST

Adds 10 IAC 4 concerning the regulation of athlete agents provided for in IC 25-5.2 (Senate Enrolled Act 171). Adds 10 IAC 4-3 establishing fees for an application for registration or renewal of registration of athlete agents. Adds 10 IAC 4-4 placing within the consumer protection division of the office of the attorney general the responsibility of the regulation of athlete agents, including the granting, denying, renewing, refusing to renew, suspending, revoking, and restricting of certificates of registration of athlete agents and investigation of athlete agents. Adds 10 IAC 4-5 establishing procedures for petitioning for administrative review under IC 4-21.5-3 and petition for the stay of effectiveness arising from the denial, suspension, revocation, restriction, or refusal to renew certificates of registration for athlete agents, and providing that the attorney general or his designee from outside the consumer protection division of the office of the attorney general may serve as administrative law judge in administrative proceedings under IC 4-21.5-3 arising from the denial, suspension, revocation, restriction, or refusal to renew certificates of registration for athlete agents. Effective 30 days after filing with the secretary of state.

10 IAC 4

SECTION 1. 10 IAC 4 IS ADDED TO READ AS FOLLOWS:

ARTICLE 4. ATHLETE AGENTS

Rule 1. Authority and Applicability

10 IAC 4-1-1 Authority

Authority: IC 4-6-2-1.3

Affected: IC 25-5.2

Sec. 1. This article is adopted under the authority granted to the attorney general by the uniform athlete agent act (IC 25-5.2). (*Office of Attorney General for the State; 10 IAC 4-1-1*)

10 IAC 4-1-2 Applicability

Authority: IC 4-6-2-1.3

Affected: IC 25-5.2

Sec. 2. The definitions in the uniform athlete agent act and in this rule apply throughout this article. (*Office of Attorney General for the State; 10 IAC 4-1-2*)

Rule 2. Definitions

10 IAC 4-2-1 "Administrative law judge" defined

Authority: IC 4-21.5-3-4

Affected: IC 4-21.5-1-1; IC 25-5.2

Sec. 1. "Administrative law judge" shall have the meaning set forth in IC 4-21.5-1-2. (*Office of Attorney General for the State; 10 IAC 4-2-1*)

10 IAC 4-2-2 "Division" defined

Authority: IC 4-21.5-3-4

Affected: IC 25-5.2

Sec. 2. "Division" means the consumer protection division of the office of attorney general for the state. (*Office of Attorney General for the State; 10 IAC 4-2-2*)

Rule 3. Fees

10 IAC 4-3-1 Fee for registration as an athlete agent

Authority: IC 4-21.5-3-4; IC 25-1-8-2; IC 25-5.2-2-7

Affected: IC 25-5.2

Sec. 1. The fee for a two (2) year application for registration or renewal of registration is seven hundred dollars (\$700). The seven hundred dollar (\$700) fee shall be deposited in the consumer fund. (*Office of Attorney General for the State; 10 IAC 4-3-1*)

Rule 4. Enforcement

10 IAC 4-4-1 Powers of regulation by the division

Authority: IC 4-21.5-3-4

Affected: IC 25-5.2

Sec. 1. The division shall have the responsibility for the regulation of athlete agents, including the:

- (1) granting;
- (2) denial;
- (3) renewal;
- (4) refusal to renew;
- (5) suspension;
- (6) revocation; and
- (7) restriction;

of certificates of registration of athlete agents. (*Office of Attorney General for the State; 10 IAC 4-4-1*)

10 IAC 4-4-2 Powers of investigation by the division

Authority: IC 4-21.5-3-4

Affected: IC 25-5.2

Sec. 2. The division may investigate any athlete agent matter for which investigative authority is granted to the attorney general by IC 25-5.2. (*Office of Attorney General for the State; 10 IAC 4-4-2*)

Rule 5. Administrative Proceedings

10 IAC 4-5-1 Administrative proceedings

Authority: IC 4-21.5-3-4

Affected: IC 25-5.2

Sec. 1. Any agency action by the division shall be gov-

erned by the rules under the administrative orders and procedures act (IC 4-21.5 et seq.). (*Office of Attorney General for the State; 10 IAC 4-5-1*)

10 IAC 4-5-2 Administrative hearings

Authority: IC 4-21.5-3-4
Affected: IC 25-5.2

Sec. 2. The attorney general shall set an administrative hearing date within twenty-one (21) days following receipt of the petition for review. (*Office of Attorney General for the State; 10 IAC 4-5-2*)

10 IAC 4-5-3 Administrative law judge to be chosen from outside the division

Authority: IC 4-21.5-3-4
Affected: IC 25-5.2

Sec. 3. For the administrative hearing described in 10 IAC 4-4-4, the attorney general or his designee shall act as administrative law judge. Should the attorney general choose to designate an administrative law judge, the administrative law judge for this hearing shall be selected from outside the division. (*Office of Attorney General for the State; 10 IAC 4-5-3*)

Rule 6. Agency Contract Notice Provision

10 IAC 4-6-1 Format for notice on agency contract

Authority: IC 4-21.5-3-4
Affected: IC 25-5.2-2-8

Sec. 1. For the purposes of IC 25-5.2-2-8, the notice required in IC 25-5.2-2-8(c) shall be considered adequate if the notice is in 14-point boldface type in capital letters within two (2) inches of the signature of the student athlete on the same page as the signature of the student athlete. (*Office of Attorney General for the State; 10 IAC 4-6-1*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 22, 2001 at 11:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Training Room 8, Indianapolis, Indiana the office of attorney general for the state will hold a public hearing on proposed new rules to implement IC 25-5.2 concerning registration of athlete agents. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Fifth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Allen K. Pope
Director, Consumer Protection Division
Office of Attorney General for the State

**TITLE 11 CONSUMER PROTECTION DIVISION OF
THE OFFICE OF THE ATTORNEY GENERAL**

Proposed Rule
LSA Document #01-265

DIGEST

Adds 11 IAC to implement IC 24-4.7 concerning telephone solicitation of consumers. Adds 11 IAC 1-1-2 defining “contract made under a telephone sales call”, 11 IAC 1-1-4 defining “express request”, 11 IAC 1-1-6 defining “residential telephone number”, and 11 IAC 1-1-7 defining “residential telephone subscriber”. Adds 11 IAC 1-2-1 requiring telephone solicitors to keep certain information regarding telephone solicitations as part of the solicitors’ business records. Adds 11 IAC 1-2-3 providing for the consumer protection division’s access to telephone solicitors’ records regarding telephone solicitations. Adds 11 IAC 1-3-1 establishing mitigating factors that may be considered by the attorney general in deciding whether to seek civil penalties for violations of IC 24-4.7. Adds 11 IAC 1-3-2 setting forth presumptions relevant to whether a telephone call has been made primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call. Adds 11 IAC 1-4-1 requiring sellers falling within IC 24-4.7-4(a)(1), IC 24-4.7-4(a)(2), or IC 24-4.7-5(a)(2) to notify consumers of the consumers’ cancellation rights, and describing the manner in which sellers may make the notice. Adds 11 IAC 1-4-2 clarifying when the attorney general will consider certain persons to have sufficiently complied with the disclosure requirements of IC 24-4.7-4-2. Adds 11 IAC 2-2 describing the manner in which consumers may register with the telephone privacy list, describing the minimum information consumers must provide to register with the list, establishing deadlines for inclusion of new registrations on the next quarterly publication of the list, and providing the manner in which consumers may revoke the consumer’s registration with the list. Adds 11 IAC 2-3 allowing certain persons who are not consumers to register residential telephone numbers with the telephone privacy list, and prohibiting such persons from registering telephone numbers that are not residential telephone numbers. Adds 11 IAC 2-5 providing for the removal of telephone numbers from the telephone privacy list. Adds 11 IAC 2-6-1 setting the fee for obtaining the telephone privacy list. Adds 11 IAC 2-6-3 requiring the division to make the telephone privacy list available for purchase in printed form. Adds 11 IAC 2-6-4 allowing the division to make the telephone privacy list available for purchase in other than printed form. Adds 11 IAC 2-6-5 establishing the information provided in the telephone privacy list. Adds 11 IAC 2-8 limiting the use of the telephone privacy list by telephone solicitors and persons generally. Incorporates by reference definitions set forth at IC 24-4.7-2. Effective 30 days after filing with the secretary of state.

Proposed Rules

11 IAC

SECTION 1. 11 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

ARTICLE 1. TELEPHONE SOLICITATIONS

Rule 1. Definitions

11 IAC 1-1-1 Applicability

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-2

Sec. 1. The definitions set forth at IC 24-4.7-2, as supplemented in this rule, apply throughout this title. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-1*)

11 IAC 1-1-2 "Contract made under a telephone sales call" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-4; IC 24-4.7-5

Sec. 2. For the purposes of IC 24-4.7-4 and IC 24-4.7-5, a "contract made under a telephone sales call" does not include a transaction for the sale, purchase, or mortgage of real estate if:

- (1) the sale of goods or services is not completed; and
- (2) the payment or authorization of payment is not required;

until after a face to face sales presentation by the seller. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-2*)

11 IAC 1-1-3 "Division" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-2-4

Sec. 3. As used in this title, "division" refers to the consumer protection division of the office of the attorney general. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-3*)

11 IAC 1-1-4 "Express request" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-1-1

Sec. 4. For the purposes of IC 24-4.7-1-1, "express request" means a specific grant of authority made by a residential telephone subscriber at a verifiable date and time authorizing a telephone solicitor to make a telephone sales call to the residential telephone subscriber's residential telephone number. The grant of authority:

- (1) shall not be included as a condition of a contract for the sale of consumer goods or services;
- (2) shall not be given by a person other than the residen-

tial telephone subscriber to whom the call will be made; and (3) if in writing, must be set forth in a document that:

- (A) is separate from any written contract between the residential telephone subscriber and the telephone solicitor authorized to make the telephone sales call;
- (B) is printed in 12-point boldface type or larger; and
- (C) contains only the grant of authority.

(*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-4*)

11 IAC 1-1-5 "Person" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 4-6-9-8; IC 24-4.7-3-7

Sec. 5. As used in this title, "person" means an individual, an incorporated or unincorporated organization, an association, or any other legal entity. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-5*)

11 IAC 1-1-6 "Residential telephone number" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 6. As used in this title and for the purposes of IC 24-4.7, "residential telephone number" means either of the following:

- (1) A number held or used by a residential telephone subscriber.
- (2) A number used for business purposes if the number terminates at an individual person's residence. This subdivision shall not be construed to prevent charitable solicitations of commercial entities.

(*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-6*)

11 IAC 1-1-7 "Residential telephone subscriber" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 7. As used in this title and for the purposes of IC 24-4.7, "residential telephone subscriber" means a person:

- (1) who has subscribed to telephone service terminating at that person's residence, or the person's spouse; or
- (2) for whose use another entity maintains telephone service terminating at the person's place of residence.

(*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-7*)

11 IAC 1-1-8 "Telephone privacy list" defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3

Sec. 8. As used in this title, "telephone privacy list" refers to the no telephone sales solicitation listing published by the division under IC 24-4.7-3 that lists the names of persons who do not wish to receive telephone sales calls. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-8*)

Rule 2. Telephone Solicitors' Maintenance of Records Related to Telephone Sales Solicitations

11 IAC 1-2-1 Telephone solicitors' required records

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 1. A telephone solicitor subject to IC 24-4.7 shall keep the following information as part of its business records:

- (1) the name and telephone number of each consumer contacted by a telephone sales call;
- (2) all substantially different advertising, brochures, telemarketing scripts, and promotional materials used in its solicitation of the consumer;
- (3) all express requests authorizing the telephone solicitor to contact the consumer; and
- (4) for all current and former employees directly involved in telephone sales, the employee's:
 - (A) name;
 - (B) last known home address;
 - (C) last known telephone number; and
 - (D) job title(s).

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-1)

11 IAC 1-2-2 Length of time telephone solicitors must retain records

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 2. A telephone solicitor shall keep the information in section 1 of this rule for two (2) years following the date the information first becomes part of its records. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-2)*

11 IAC 1-2-3 Division access to solicitor's records

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 3. Upon oral or written request of the division, a telephone solicitor shall make the records it keeps pursuant to this rule available for inspection and copying by the division during normal business hours. This section does not limit the division's ability to inspect and copy material pursuant to any other means available to it. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-3)*

Rule 3. Enforcement of Violations of IC 24-4.7

11 IAC 1-3-1 Mitigating factors

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-2; IC 24-4.7-4; IC 24-4.7-5

Sec. 1. In any proceeding brought against a telephone solicitor by the attorney general under IC 24-4.7-5, the

following may be considered as mitigating factors favoring the defendant in the attorney general's decision to seek civil penalties, if and only if all are present:

- (1) That the defendant has obtained, from the division or the agent with which the division has contracted under IC 24-4.7-3-2, the most recently published quarterly listing.
- (2) That the defendant has maintained the records required by 11 IAC 1-2-1.
- (3) That the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of IC 24-4.7-4.
- (4) That the defendant has not previously been found to have violated IC 24-4.7.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-3-1)

11 IAC 1-3-2 Presumptions regarding whether telephone call has been made primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-1-1; IC 24-4.7-4; IC 24-4.7-5

Sec. 2. For the purposes of IC 24-4.7-1-1(2), the following apply:

- (1) In determining whether a telephone call shall be deemed to have been made primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call, the following presumptions shall apply:
 - (A) If the telephone call is made before the person contacted has failed to make a payment on such debt or contract when due, the division will presume that the telephone call was not made primarily in connection with an existing debt or contract for which payment or performance has not been completed.
 - (B) If the telephone call is made after the person contacted has failed to make a payment on such debt or contract when due, the division will presume that the telephone call was made primarily in connection with an existing debt or contract for which payment or performance has not been completed.
- (2) A telephone call made primarily to solicit the refinancing of an existing debt shall not be considered to have been made primarily in connection with an existing debt or contract for which payment or performance has not been completed, unless such call is made after the person contacted has failed to make a payment on such debt when due.
- (3) A telephone call made by any person other than that to which the debt or contractual obligation is owed, or by a person authorized to receive payment or performance of the debt or contractual obligations on behalf of the person to which it is owed, shall not be considered to have

Proposed Rules

been made primarily in connection with an existing debt or contract for which payment or performance has not been completed.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-3-2)

Rule 4. Miscellaneous Provisions

11 IAC 1-4-1 Seller's notice of right of cancellation to consumer

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-4-4; IC 24-4.7-4-5

Sec. 1. For the purposes of IC 24-4.7-4-4 and IC 24-4.7-4-5, the following apply:

(1) In any sale otherwise falling within IC 24-4.7-4-4(a)(1), IC 24-4.7-4-4(a)(2), or IC 24-4.7-4-5(a)(2), the solicitor shall provide to the consumer a written notice setting forth the consumer's cancellation rights before the sale will be exempted from IC 24-4.7-4-4 or IC 24-4.7-4-5.

(2) If the seller mails the notice required by this section to the consumer, the notice must be delivered to the consumer in an envelope that conspicuously notifies the consumer that a right of cancellation is enclosed. The division will presume the notice to be conspicuous if the envelope, on its exterior, bears the following statement in 16-point red boldface type, "Important: Right of Cancellation Enclosed."

(3) The period within which the consumer may provide the notice of cancellation under IC 24-4.7-4-4(a)(1), IC 24-4.7-4-4(a)(2), or IC 24-4.7-4-5(a)(2) shall be extended by three (3) days if the seller delivers the required notice by mail.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-4-1)

11 IAC 1-4-2 Charitable solicitor's disclosure

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 23-7-8-1; IC 24-4.7-4-2

Sec. 2. The attorney general shall consider a person engaged in noncommercial speech, including a professional fundraiser consultant or solicitor as defined at IC 23-7-8-1 who calls on behalf of such charitable organization, to have sufficiently complied with IC 24-4.7-4-2 if the person makes the disclosures required by IC 24-4.7-4-2 before requesting a donation. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-4-2)*

ARTICLE 2. PROVISION OF LISTING OF TELEPHONE NUMBERS NOT TO BE SOLICITED

Rule 1. Applicability

11 IAC 2-1-1 Applicability

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-3

Sec. 1. This article governs the division's provision of the telephone privacy list. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-1-1)*

Rule 2. Consumer Registration with the Telephone Privacy List

11 IAC 2-2-1 Manner of consumer registration

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-3-2

Sec. 1. A consumer who resides in Indiana may request that his or her residential telephone number or numbers be added to the telephone privacy list by submitting a request in any manner provided by the division, or by the agent with which the division has contracted under IC 24-4.7-3-2, which may include any of the following:

(1) Completing a written form designed by the division, or the agent with which the division has contracted under IC 24-4.7-3-2, for the purpose of recording a consumer's request to be placed on the telephone privacy list.

(2) Calling a toll-free number established by the division, or by the agent with which the division has contracted under IC 24-4.7-3-2, for the purpose of recording a consumer's request to be placed on the telephone privacy list, and providing all the information requested.

(3) Accessing the appropriate Internet site established by the division, or by the agent with which the division has contracted under IC 24-4.7-3-2, for the purpose of recording a consumer's request to be placed on the telephone privacy list and inputting the proper data requested by the Web site prompts.

(4) Submitting a request in any other format that the division or the agent with which the division has contracted under IC 24-4.7-3-2 may from time to time establish.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-1)

11 IAC 2-2-2 Required information for consumer registration

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-3

Sec. 2. Any method of registering with the telephone privacy list shall require the consumer to provide, at a minimum, the following information:

(1) The consumer's name.

(2) The residential telephone number or numbers the consumer wishes to register with the telephone privacy list.

(3) The consumer's address.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-2)

11 IAC 2-2-3 Deadline for telephone numbers' inclusion in next quarterly publication of telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-3-1

Sec. 3. The telephone numbers of properly completed requests for registration with the telephone privacy list shall become part of the telephone privacy list in the quarter following the deadline for receipt of registration requests according to the following schedule:

<u>Calendar Quarter</u>	<u>Receipt Deadline</u>
January–March	December 15
April–June	March 15
July–September	June 15
October–December	September 15

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-3)

11 IAC 2-2-4 Consumers’ revocation of registration

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7-3-2

Sec. 4. A consumer may remove his or her residential telephone number or numbers from the telephone privacy list by submitting a revocation notice for the number or numbers to the division or the agent with which the division has contracted under IC 24-4.7-3-2. Such request may be submitted in any manner established by the division as described in section 1 of this rule, and must contain at least the information required in section 2 of this rule. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-4)*

Rule 3. Registration with the Telephone Privacy List by Persons Not Consumers, but Holding or Controlling Residential Telephone Numbers Used by Consumers

11 IAC 2-3-1 Registration by persons not consumers

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7-3

Sec. 1. A person who is not a consumer, but who subscribes to residential telephone numbers used by consumers, may register such numbers with the telephone privacy list in any manner established by the division as described in 11 IAC 2-2-1. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-3-1)*

11 IAC 2-3-2 Prohibition against registration of nonresidential telephone numbers

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 2. A person described in section 1 of this rule may not register telephone numbers that are not residential telephone numbers. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-3-2)*

Rule 4. Consumers and Persons Submitting More than 10 Residential Telephone Numbers for Registration with the Telephone Privacy List

11 IAC 2-4-1 Registration of more than 10 telephone numbers

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 1. A consumer, or a person described in 11 IAC 2-3-1, may register more than ten (10) residential telephone numbers with the telephone privacy list if the consumer or person provides:

- (1) the consumer’s or person’s name;
- (2) the residential telephone numbers the consumer or person wants to register with the telephone privacy list; and
- (3) the consumer’s or person’s address;

in any manner established by the division for registering more than ten (10) such numbers. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-4-1)*

Rule 5. Removal of Telephone Numbers from the Telephone Privacy List

11 IAC 2-5-1 Division’s authority to purge non-residential telephone numbers

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 1. The division may purge or may direct the agent with which it has contracted pursuant to IC 24-4.7-3-2 to purge from the telephone privacy list any number that is not a residential telephone number. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-5-1)*

11 IAC 2-5-2 Division’s authority to purge telephone numbers no longer assigned to consumer

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 2. The division may purge or may direct the agent with which it has contracted pursuant to IC 24-4.7-3-2 to purge from the telephone privacy list a residential telephone number if the division learns that the number is no longer assigned to the consumer who registered the number. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-5-2)*

11 IAC 2-5-3 Purging registered telephone number upon consumer’s revocation notice

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 3. The division shall purge or shall direct the agent with which it has contracted pursuant to IC 24-4.7-3-2 to purge a residential telephone number of a consumer who submits the revocation notice described in 11 IAC 2-2-4. Upon receiving such revocation notice, the division will remove the relevant telephone number from the telephone privacy list according to the same schedule used for adding residential telephone numbers to the telephone privacy list.

Proposed Rules

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-5-3)

Rule 6. Access to the Telephone Privacy List

11 IAC 2-6-1 Fee for obtaining telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1

Sec. 1. The fee for obtaining the telephone privacy list is three hundred dollars (\$300). The person paying this fee is entitled to four (4) quarterly publications of the telephone privacy list. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-1)*

11 IAC 2-6-2 Requirements for obtaining telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 2. A person may obtain a copy of the telephone privacy list established under IC 24-4.7-3 by:

- (1) paying the fee set forth at section 1 of this rule; and
- (2) providing the information requested by the division or by the agent with which the division has contracted pursuant to IC 24-4.7-3-2.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-2)

11 IAC 2-6-3 Division's provision of telephone privacy list in printed form

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 3. The division shall make a printed copy of the telephone privacy list available for purchase by persons complying with section 2 of this rule. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-3)*

11 IAC 2-6-4 Division's provision of telephone privacy list in nonprinted form

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2; IC 24-4.7-4

Sec. 4. The division may make the telephone privacy list available for purchase in other forms by persons complying with section 2 of this rule if the division determines that such additional forms will further the efficient dissemination of the telephone privacy list and encourage compliance with IC 24-4.7-4 or this title. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-4)*

11 IAC 2-6-5 Information contained in published telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 5. The telephone privacy list published by the

division shall, regardless of its form, contain only the residential telephone numbers that telephone solicitors are prohibited from calling under IC 24-4.7-4. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-5)*

Rule 7. Inclusion of National Database into Telephone Privacy List

11 IAC 2-7-1 Inclusion of national database into telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2; IC 24-4.7-4-3

Sec. 1. If, pursuant to 42 U.S.C. 227(c)(3), the Federal Communications Commission establishes a single national data base of telephone numbers of subscribers who object to receiving telephone solicitations, the division shall include the part of such single national data base that relates to Indiana in the data base established under IC 24-4.7-4-3. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-7-1)*

Rule 8. Use of the Telephone Privacy List

11 IAC 2-8-1 Telephone solicitors' use of the telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 1. A telephone solicitor shall not use the telephone privacy list, or the information accepted by the division in compiling it, for any purpose other than complying with IC 24-4.7, in a proceeding or action brought under IC 24-4.7, or with this title. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-8-1)*

11 IAC 2-8-2 Limits to commercial use of telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 2. A person shall not use the telephone privacy list, or the information accepted by the division in compiling it, for any commercial purpose other than telephone solicitations made in compliance with IC 24-4.7 and this title. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-8-2)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 22, 2001 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Training Room 8, Indianapolis, Indiana the Consumer Protection Division of the Office of the Attorney General will hold a public hearing on proposed new rules to implement IC 24-4.7,

concerning telephone solicitation of consumers. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Fifth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Allen K. Pope
Director, Consumer Protection Division
Office of the Attorney General

**TITLE 170 INDIANA UTILITY REGULATORY
COMMISSION**

Proposed Rule
LSA Document #01-236

DIGEST

Amends 170 IAC 7-1.1-19 concerning unauthorized switching of telecommunications providers; billing for telecommunications or other services added without customer's consent. Effective 30 days after filing with the secretary of state.

170 IAC 7-1.1-19

SECTION 1. 170 IAC 7-1.1-19 IS AMENDED TO READ AS FOLLOWS:

170 IAC 7-1.1-19 Unauthorized switching of telecommunications providers; billing for telecommunications or other services added without customer's consent

Authority: IC 8-1-1-3; IC 8-1-29
Affected: IC 8-1-2-4

Sec. 19. (a) For purposes of this rule, the following definitions apply:

- (1) "Express authorization" means an express, affirmative act by the customer clearly agreeing to the change in PIC or LEC in the form of:
 - (A) a written authorization;
 - (B) a customer-initiated call to the prospective IXC or LEC;
 - (C) an oral authorization verified, and recorded, by an independent third party;
 - (D) a recorded electronic authorization; or
 - (E) some other form of recorded authorization, such as personal identification numbers (PINs) or passwords.
- (2) "Letter of agency" or "LOA" means a written statement that the customer signs that authorizes a change to that customer's primary interexchange carrier or primary local exchange carrier.
- (3) "Local exchange carrier" or "LEC" means a provider of switched telecommunications service that carries calls originating and terminating within the local calling area.

(4) "Long distance telecommunications service" means service that carries calls to exchanges that are not within the local calling area of the originating number.

(5) "Primary interexchange carrier" or "PIC" means a provider of presubscribed inter-LATA or intra-LATA long distance telecommunications services. Presubscribed facilities-based carriers of long distance service, resellers of long distance service, and local exchange carriers providing long distance service are included in this definition. In those local exchanges where intra-LATA equal access is available, customers may receive presubscribed long distance service from more than one (1) PIC (one (1) for inter-LATA and one (1) for intra-LATA toll) or may select a single PIC that provides both inter-LATA and intra-LATA toll service.

(6) "Primary local exchange carrier" or "PLEC" means a carrier to which a customer has presubscribed for local exchange service.

(7) "Properly disputed" means the filing of a complaint, either verbally or in writing, with the commission.

(8) "Telemarketing" means the use of telecommunications in marketing campaigns to reach prospective purchasers and sell them goods or services.

(b) No prospective PIC shall submit to a LEC a PIC change order generated by telemarketing unless the prospective PIC has first obtained express authorization from the customer. No prospective LEC shall submit a PLEC change order generated by telemarketing unless the prospective LEC has first obtained express authorization from the customer.

(c) The prospective PIC or prospective LEC shall confirm such express authorization through one (1) of the following ~~four~~ **three (3)** procedures:

- (1) The prospective PIC or prospective LEC shall obtain the customer's written authorization in a form that meets the requirements of ~~sections subsections~~ **subsections** (e) through (m). ~~of this rule; or~~
- (2) The prospective PIC or prospective LEC shall obtain the customer's electronic authorization, placed from the telephone number(s) on which the PIC or PLEC is to be changed, to submit a PIC or PLEC change order. The authorization shall include the information described in ~~section subsection~~ **section subsection** (i). ~~of this rule.~~ Prospective PICs or prospective LECs electing to confirm sales electronically shall establish one (1) or more toll-free telephone numbers exclusively for that purpose. A call to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC or PLEC change, including automatically recording the automatic number identification (ANI). ~~or~~
- (3) An appropriately qualified and independent third party shall obtain the customer's oral authorization to submit the PIC or PLEC change order. Such authorization shall confirm and include appropriate verification data, ~~(e.g., for example,~~ **for example,** the customer's date of birth, mother's maiden name, or Social

Proposed Rules

Security number or part thereof. Such authorization is valid only if the entity that obtained the authorization:

(A) is independent of the prospective PIC or prospective LEC or the telemarketing representative of the prospective PIC or prospective LEC;

(B) complies with these rules this section regarding changes to telecommunications carriers;

(C) has a written policy regarding customer complaints and abides by that policy;

(D) has a written policy requiring the maintenance and storage of recorded electronic authorizations for a minimum period of one (1) year and abides by that policy;

(E) has a written script that it uses when obtaining verifications, and the script provides clear and unambiguous notice to the customer of the following:

(i) that the customer is authorizing a change in primary interexchange or primary local exchange carrier;

(ii) the identity of the new primary interexchange or primary local exchange carrier;

(iii) a toll-free or local number of the LEC that the customer can call to verify whether the change has occurred;

(iv) that, for any one (1) telephone number:

(AA) only one (1) prospective PIC may be designated as the subscriber's inter-LATA primary interexchange carrier;

(BB) only one (1) prospective PIC may be designated as the subscriber's intra-LATA primary interexchange carrier; and

(CC) only one (1) intrastate primary LEC may be designated as the subscriber's primary LEC;

(v) that the PIC change will automatically apply to both inter-LATA and intra-LATA long distance service offerings unless the customer directs otherwise; and

(F) is in a location that is physically separate from that of the prospective PIC or prospective LEC or the telemarketing representative of the prospective PIC or prospective LEC. or

~~(4) Within three (3) business days of the customer's request for a PIC or PLEC change, the prospective PIC or prospective LEC must send each new customer an information package by first class mail containing at least the following information concerning the requested change:~~

~~(A) The information is being sent to confirm an order placed by the customer within the previous week.~~

~~(B) The name of the customer's current PIC or LEC.~~

~~(C) The name of the newly requested PIC or LEC.~~

~~(D) A description of any terms, conditions, or charges that will be incurred.~~

~~(E) The name of the person ordering the change.~~

~~(F) The name, address, and telephone number of both the customer and the soliciting PIC or LEC.~~

~~(G) A postpaid postcard which the customer can use to deny, cancel, or confirm a service order.~~

~~(H) A clear statement that if the customer does not, within~~

~~fourteen (14) days after the date the information package was mailed; return the postcard; the customer's long distance or local exchange service will be switched to the soliciting carrier.~~

~~(I) The name, address, and telephone number of a contact point at the consumer affairs division of the Indiana utility regulatory commission and the consumer division of the Federal Communications Commission; and~~

~~(J) Prospective PICs and prospective LECs must wait fourteen (14) days after the form is mailed to customers before submitting their PIC or PLEC change orders to incumbent PICs or incumbent LECs. If customers have canceled their orders during the waiting period, prospective PICs or prospective LECs cannot submit the customer's order to the incumbent PICs or incumbent LECs.~~

~~(K) A clear statement that, for any one (1) telephone number:~~

~~(i) only one (1) prospective PIC may be designated as the subscriber's inter-LATA primary interexchange carrier;~~

~~(ii) only one (1) prospective PIC may be designated as the subscriber's intra-LATA primary interexchange carrier; and~~

~~(iii) only one (1) intrastate primary LEC may be designated as the subscriber's intrastate primary LEC.~~

(d) A PIC or PLEC change made in violation of any of the requirements of ~~170 IAC 7-1.1-19~~ **this section** is invalid. A prospective PIC or PLEC must provide all information regarding disputed carrier changes and services billings to the commission within thirty (30) days of a commission request for said information.

(e) If the prospective PIC or prospective LEC utilizes authorization procedure in subsection (c)(1) above, the prospective PIC or LEC shall obtain any necessary written authorization from a subscriber for a PIC or PLEC change by using a letter of agency as specified in ~~sections subsections~~ (f) through (m). ~~of this rule~~. Any letter of agency that does not conform with those ~~sections subsections~~ is invalid.

(f) The letter of agency shall be a separate document, an easily separable document containing only the authorizing language described in ~~section subsection~~ (i), ~~of this rule~~ whose sole purpose is to authorize a prospective PIC or LEC to initiate a primary interexchange carrier or PLEC change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier or PLEC change. The subscriber (or authorized agent in the case of a business customer) whose name appears on bills for local and interexchange service shall be the only party authorized to execute a letter of agency.

(g) The letter of agency shall not be combined with inducements of any kind on the same document.

(h) Notwithstanding ~~sections subsections~~ (f) and (g), ~~of this rule~~, the letter of agency may be combined with checks that

contain only the required letter of agency language prescribed in ~~section subsection (i) of this rule~~ and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary interexchange carrier or PLEC change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

(i) At a minimum, the letter of agency must be printed with a typeface of sufficient size and clarity to be clearly legible and must contain clear and unambiguous language that confirms:

(1) the subscriber's billing name and address and each telephone number to be covered by the primary interexchange carrier or PLEC change order;

(2) the subscriber's decision to change the primary interexchange carrier or PLEC from the current interexchange carrier or LEC to the prospective interexchange carrier or prospective LEC;

(3) that the subscriber designates the prospective interexchange carrier or prospective LEC to act as the subscriber's agent for the primary interexchange carrier or PLEC change;

(4) that the subscriber understands that, for any one (1) telephone number:

(A) only one (1) prospective PIC may be designated as the subscriber's inter-LATA primary interexchange carrier;

(B) only one (1) prospective PIC may be designated as the subscriber's intra-LATA primary interexchange carrier; and

(C) only one (1) intrastate primary LEC may be designated as the subscriber's intrastate primary LEC;

(5) that the subscriber understands that any change in primary interexchange carrier or primary LEC may result in a charge to the subscriber; and

(6) the LEC's toll-free or local number that the customer can call to verify whether the change has occurred.

(j) To the extent a customer selects separate carriers for inter-LATA, intra-LATA, and LEC services, the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier for inter-LATA service must be the carrier directly setting the inter-LATA service rates for the subscriber. Any carrier designated as a primary interexchange carrier for intra-LATA services must be the carrier directly setting the intra-LATA service rates for the subscriber. Any carrier designated as a primary local exchange carrier must be the LEC directly setting the local exchange service rates for the subscriber. One (1) interexchange carrier can be both a subscriber's inter-LATA primary interexchange carrier and a subscriber's intra-LATA primary interexchange carrier.

(k) Letters of agency shall not suggest or require that a

subscriber take some action in order to retain the subscriber's current interexchange carrier or LEC.

(l) If any portion of a letter of agency is translated into a language other than English, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency.

(m) The letter of agency shall provide the toll-free telephone number and mailing address of the consumer affairs division of the Indiana utility regulatory commission and shall inform the customer of his or her right to file a complaint with that division.

(n) Upon request of the customer, offers to provide telecommunications interexchange or local exchange services shall be sent to the customer in written form, describing the terms and conditions of service.

(o) Except for tariff-regulated, customer-initiated, one-time use products, such as collect calling services, optional pay-per-use services (including automatic callback, repeat dialing, and three-way calling), no PIC or LEC or any billing agent acting for said PIC or LEC shall bill a customer for any service unless the PIC, LEC, or billing agent possesses written or electronic documentation ~~which that~~ shows:

(1) the name of the customer requesting the service;

(2) a description of the service requested by the customer;

(3) the date on which the customer requested the service;

(4) the means by which the customer requested the service; and

(5) the name, address, and telephone number of all sales agents involved.

(p) No PIC, LEC, or billing agent for any PIC or LEC shall be entitled to any compensation from a customer for services rendered in violation of this rule.

(q) The customer's local exchange company shall not disconnect the customer's phone service for nonpayment where the customer has properly disputed a carrier change or service billing.

(r) This rule shall apply only to the extent not preempted by federal law. (*Indiana Utility Regulatory Commission; 170 IAC 7-1.1-19; filed Jan 18, 1999, 1:18 p.m.: 22 IR 1938; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 5, 2001 at 9:30 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room TC-10, Indianapolis, Indiana the Indiana Utility Regulatory Commission will hold a public hearing on proposed amendments to the commission's

Proposed Rules

rule concerning the unauthorized switching of telecommunications providers and the billing for telecommunications or other services added without the customer's consent. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E306 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

William D. McCarty
Commission Chairman
Indiana Utility Regulatory Commission

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule LSA Document #01-302

DIGEST

Amends 405 IAC 5-34-12 to eliminate bed hold days for hospice recipients when Medicaid certified and enrolled nursing facility occupancy for all residents is less than 90%. Effective 30 days after filing with the secretary of state.

405 IAC 5-34-12

SECTION 1. 405 IAC 5-34-12 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-34-12 Reservation of beds for hospice recipients in nursing facilities

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40
Affected: IC 12-15

Sec. 12. (a) Although it is not mandatory for providers to reserve beds, Medicaid will reimburse for reserving nursing facility beds for hospice recipients at one-half (½) the room and board payment ~~determined under 405 IAC 1-16-4~~, provided that the criteria **as set out** in this section are met.

(b) Hospitalization must be ordered by the hospice physician for treatment of an acute condition that cannot be treated in the nursing facility by the hospice provider. The ~~total~~ **maximum** length of time allowed for payment of a reserved bed for a single hospital stay is fifteen (15) days.

(c) A leave of absence must be for therapeutic reasons, as prescribed by the **hospice** attending ~~hospice~~ physician and as indicated in the **hospice** recipient's plan of care. The ~~total~~ **maximum** length of time allotted for therapeutic leave in any calendar year is limited to eighteen (18) days, which need not be consecutive.

(d) Although prior authorization by the office is not required

to reserve a bed, the hospice recipient's physician's order for the hospitalization or **therapeutic** leave must be on file in the nursing facility.

(e) In no instance will Medicaid reimburse a nursing facility for reserving nursing facility beds for hospice Medicaid recipients when the nursing facility has an occupancy rate of less than ninety percent (90%). For purposes of this rule, the occupancy rate shall be determined by dividing the total number of residents in licensed beds, excluding residential beds, in the nursing facility taken from the midnight census as of the day that a Medicaid hospice recipient takes a leave of absence, by the total number of licensed nursing facility beds, excluding residential beds. (*Office of the Secretary of Family and Social Services; 405 IAC 5-34-12; filed Mar 9, 1998, 9:30 a.m.: 21 IR 2383; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 26, 2001 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Training Center Room 5, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to eliminate bed hold days for hospice recipients when Medicaid certified and enrolled nursing facility occupancy for all residents is less than 90%. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton
Secretary
Office of the Secretary of Family and Social
Services

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule LSA Document #01-304

DIGEST

Adds 405 IAC 1-18 to specify Medicaid reimbursement methodology for Medicare cross-over claims. Effective 30 days after filing with the secretary of state.

405 IAC 1-18

SECTION 1. 405 IAC 1-18 IS ADDED TO READ AS FOLLOWS:

Rule 18. Reimbursement of Medicare Cross-Over Claims

405 IAC 1-18-1 Definitions

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2;
IC 12-15-21-3

Affected: IC 12-15-13; IC 12-15-14

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) “Cross-over claim” means a Medicaid claim filed on behalf of a Medicare beneficiary who is also eligible for Medicaid. The term includes claims filed on behalf of beneficiaries who are eligible for Medicaid in any category, including, but not limited to, qualified Medicare beneficiaries (QMBs) and beneficiaries who are eligible for full Medicaid coverage.

(c) “Medicaid allowable amount” means the reimbursement rate for a Medicaid claim as determined under state and federal law and policies. This reimbursement rate shall be the most recent rate on file with the office of Medicaid policy and planning or its contractor at the time a cross-over claim is processed.

(d) “Medicare coinsurance and deductible” means the Medicare cost-sharing costs described in 42 U.S.C. 1396d(p)(3)(B) through 42 U.S.C. 1396d(p)(3)(D).

(e) “Medicare payment amount” means the amount of payment made by Medicare to the provider for a given claim. It does not include coinsurance amounts or deductibles. (*Office of the Secretary of Family and Social Services; 405 IAC 1-18-1*)

405 IAC 1-18-2 Reimbursement of nursing facility cross-over claims

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2;
IC 12-15-21-3

Affected: IC 12-15-14

Sec. 2. (a) Cross-over claims filed by nursing facilities are reimbursed as set out in this section.

(b) If the Medicare payment amount for a claim exceeds or equals the Medicaid allowable amount for that claim, Medicaid reimbursement will be zero (0).

(c) If the Medicaid allowable amount for a claim exceeds the Medicare payment amount for that claim, Medicaid reimbursement is the lesser of:

- (1) the difference between the Medicaid allowable amount minus the Medicare payment amount; or
- (2) the Medicare coinsurance and deductible, if any, for the claim.

(d) Cross-over claims filed by providers other than nursing facilities are reimbursed as described in section 3 of

this rule. (*Office of the Secretary of Family and Social Services; 405 IAC 1-18-2*)

405 IAC 1-18-3 Reimbursement of cross-over claims filed by providers other than nursing facilities

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2;
IC 12-15-21-3

Affected: IC 12-15-13

Sec. 3. (a) Notwithstanding 405 IAC 1-1-3(f)(2), cross-over claims filed by providers other than nursing facilities are reimbursed as set out in this section.

(b) Medicaid reimbursement will be equal to the Medicare coinsurance and deductible, if any, for the claim.

(c) Cross-over claims filed by nursing facilities are reimbursed as described in section 2 of this rule. (*Office of the Secretary of Family and Social Services; 405 IAC 1-18-3*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 30, 2001 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed new rules to specify Medicaid reimbursement methodology for Medicare cross-over claims. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton
Secretary
Office of the Secretary of Family and Social
Services

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #01-159

DIGEST

Adds 410 IAC 17-9, 410 IAC 17-10, 410 IAC 17-11, 410 IAC 17-12, 410 IAC 17-13, 410 IAC 17-14, 410 IAC 17-15, and 410 IAC 17-16 to protect the health, safety, and welfare of patients, govern the qualifications of applicants for licenses, govern the operating policies, supervision, and maintenance of service records of home health agencies, and govern the procedure for issuing, renewing, denying, or revoking a license to a home health agency. Effective 30 days after filing with the secretary of state.

Proposed Rules

410 IAC 17-1.1	410 IAC 17-9
410 IAC 17-2	410 IAC 17-10
410 IAC 17-3	410 IAC 17-11
410 IAC 17-4	410 IAC 17-12
410 IAC 17-5	410 IAC 17-13
410 IAC 17-6	410 IAC 17-14
410 IAC 17-7	410 IAC 17-15
410 IAC 17-8	410 IAC 17-16

SECTION 1. 410 IAC 17-9 IS ADDED TO READ AS FOLLOWS:

Rule 9. Definitions

410 IAC 17-9-1 Applicability

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 1. The definitions in this rule apply throughout this article. (*Indiana State Department of Health; 410 IAC 17-9-1*)

410 IAC 17-9-2 “Administrator” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 2. “Administrator” means any health care professional who has at least one (1) year of supervisory or administrative experience in health service, or any other individual who has at least one (1) year of experience in health service administration or health service finance. (*Indiana State Department of Health; 410 IAC 17-9-2*)

410 IAC 17-9-3 “Advance directive” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 3. “Advance directive” means a written instruction, such as a living will or durable power of attorney for health care, recognized under state law and relating to the provision of such care when the individual is incapacitated. (*Indiana State Department of Health; 410 IAC 17-9-3*)

410 IAC 17-9-4 “Attendant care services” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 4. “Attendant care services” means those services that could be performed by an impaired individual for whom the services are provided if the individual were not impaired, that enable the impaired individual to live in the individual’s home and community, rather than in an institution, and to carry out functions of daily living, self care, and mobility. The term includes the following:

- (1) Assistance in getting in and out of beds, wheelchairs, and motor vehicles.
- (2) Assistance with routine bodily functions, including the following:
 - (A) Bathing and personal hygiene.
 - (B) Using the toilet.

(C) Dressing and grooming.

(D) Feeding, including preparation and cleanup.

(3) The provision of assistance as follows:

(A) Through providing reminders or cues to take medication, the opening of pre-set medication containers, and providing assistance in the handling or ingesting of noncontrolled substance medications, including eye drops, herbs, supplements, and over-the-counter medications.

(B) To an individual who is unable to accomplish the task due to an impairment and who is:

- (i) competent and has directed the services; or
- (ii) incompetent and has the services directed by a competent individual who may consent to health care for the impaired individual.

(*Indiana State Department of Health; 410 IAC 17-9-4*)

410 IAC 17-9-5 “Branch office” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 5. “Branch office” means a location or site from which a home health agency provides services for a portion of the total geographic area served by the parent home health agency. To be a branch office, the office must be part of the parent agency and share administration, supervision, and services with the parent agency. The parent agency and the branch office must be capable of sharing emergency functions, including services, on a daily basis. A branch office must be located within one hundred twenty (120) minutes driving time of the parent agency. (*Indiana State Department of Health; 410 IAC 17-9-5*)

410 IAC 17-9-6 “Bylaws” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 6. “Bylaws” means a written set of rules adopted by a home health agency for governing the agency’s operation. (*Indiana State Department of Health; 410 IAC 17-9-6*)

410 IAC 17-9-7 “Clinical note” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 7. “Clinical note” means a notation written and dated by a member of the health team regarding his or her contact with a patient who is being treated under a medical plan of care. (*Indiana State Department of Health; 410 IAC 17-9-7*)

410 IAC 17-9-8 “Closed files” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 8. “Closed files” means those files which concern services provided prior to a patient’s discharge. (*Indiana State Department of Health; 410 IAC 17-9-8*)

410 IAC 17-9-9 “Continuing education program” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 9. “Continuing education program means one (1) or more in-service training classes offered to home health aides for the purpose of satisfying the continuing education requirement. (*Indiana State Department of Health; 410 IAC 17-9-9*)

410 IAC 17-9-10 “Current service files” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 10. “Current service files” means those files concerning a patient who is currently receiving services from the home health agency. (*Indiana State Department of Health; 410 IAC 17-9-10*)

410 IAC 17-9-11 “Department” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 11. “Department” means the Indiana state department of health. (*Indiana State Department of Health; 410 IAC 17-9-11*)

410 IAC 17-9-12 “Encounter” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 12. “Encounter” means a direct personal contact between a patient and the person authorized by the home health agency to furnish services to the patient. (*Indiana State Department of Health; 410 IAC 17-9-12*)

410 IAC 17-9-13 “Frequency of visits” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 13. “Frequency of visits” means the number of encounters in a given period between a patient and the person authorized by the home health agency to furnish services to the patient. The term may be expressed as a number or a range. The number of encounters must be at least one (1). (*Indiana State Department of Health; 410 IAC 17-9-13*)

410 IAC 17-9-14 “Governing body” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 14. “Governing body” means person or group of persons who have the legal and financial responsibility for the home health agency’s overall operation. (*Indiana State Department of Health; 410 IAC 17-9-14*)

410 IAC 17-9-15 “Health care professional” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1; IC 25-10-1; IC 25-14; IC 25-22.5; IC 25-23-1; IC 25-23.5; IC 25-23.6-2-1; IC 25-24; IC 25-26-13; IC 25-27; IC 25-29; IC 25-35.6-1-2; IC 25-35.6-3

Sec. 15. “Health care professional” means any of the following:

- (1) A licensed physician.
- (2) A licensed dentist.
- (3) A licensed chiropractor.
- (4) A licensed podiatrist.
- (5) An licensed optometrist.
- (6) A nurse licensed under IC 25-23-1.
- (7) A physical therapist licensed under IC 25-27 or a physical therapy assistant certified under IC 25-27.
- (8) A speech-language pathologist or an audiologist licensed under IC 25-35.6-3.
- (9) A speech-language pathology aide or an audiology aide (as defined in IC 25-35.6-1-2).
- (10) An occupational therapist or an occupational therapist assistant certified under IC 25-23.5.
- (11) A social worker licensed under IC 25-23.6-2-1 or a social work assistant.
- (12) A pharmacist licensed under IC 25-26-13.

(*Indiana State Department of Health; 410 IAC 17-9-15*)

410 IAC 17-9-16 “Home health aide” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 16. “Home health aide” means an individual who provides home health aide services. The term does not include the following:

- (1) A health care professional.
- (2) A volunteer who provides home health aide services without compensation.
- (3) An immediate member of the patient’s family.

(*Indiana State Department of Health; 410 IAC 17-9-16*)

410 IAC 17-9-17 “Home health aide services” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 17. “Home health aide services” means only those home health services that may be performed by a home health aide. (*Indiana State Department of Health; 410 IAC 17-9-17*)

410 IAC 17-9-18 “Home health services” defined

Authority: IC 16-27-1-7
Affected: IC 12-10-17; IC 16-27-1-10; IC 25-22.5

Sec. 18. (a) “Home health services” means services that are:

- (1) provided to a patient by:
 - (A) a home health agency; or
 - (B) another person under an arrangement with a home health agency;
- in the temporary or permanent residence of the patient; and
- (2) ordered by a licensed physician, a licensed dentist, a licensed chiropractor, a licensed podiatrist, or a licensed optometrist.

Proposed Rules

(b) The term includes the following:

- (1) Nursing treatment and procedures.
- (2) Physical therapy.
- (3) Occupational therapy.
- (4) Speech therapy.
- (5) Medical social services.
- (6) Home health aide services.
- (7) Other therapeutic services.

(c) The term does not apply to the following:

- (1) Services provided by a physician licensed under IC 25-22.5.
- (2) Incidental services provided by a licensed health facility to patients of the licensed health facility.
- (3) Services provided by employers or membership organizations using health care professionals for their employees, members, and families of the employees or members if the health or home care services are not the predominant purpose of the employer or a membership organization's business.
- (4) Nonmedical nursing care given in accordance with the tenets and practice of a recognized church or religious denomination to a patient who depends upon healing by prayer and spiritual means alone in accordance with the tenets and practices of the patient's church or religious denomination.
- (5) Services that are allowed to be performed by an attendant under IC 16-27-1-10.
- (6) Authorized services provided by a personal services attendant under IC 12-10-17.

(Indiana State Department of Health; 410 IAC 17-9-18)

410 IAC 17-9-19 "Medical plan of care" defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 19. "Medical plan of care" means written instructions signed by the physician, dentist, chiropractor, podiatrist, or optometrist for the provision of care or treatment to be given by a registered or practical nurse, physical or occupational therapist, speech-language pathologist, social worker, or home health aide to a patient in the patient's place of residence. *(Indiana State Department of Health; 410 IAC 17-9-19)*

410 IAC 17-9-20 "Medication assistance" defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 20. "Medication assistance" means the provision of assistance:

- (1) through providing reminders or cues to take medication, the opening of pre-set medication containers, and providing assistance in the handling or ingesting of noncontrolled substance medications, including eye drops, herbs, supplements, and over-the-counter medications; and

(2) to an individual who is unable to accomplish the task due to an impairment and who is:

- (A) competent and has directed the services; or
- (B) incompetent and has the services directed by a competent individual who may consent to health care for the impaired individual.

(Indiana State Department of Health; 410 IAC 17-9-20)

410 IAC 17-9-21 "Member of the health team" defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 21. "Member of the health team" means a health care professional or a home health aide. *(Indiana State Department of Health; 410 IAC 17-9-21)*

410 IAC 17-9-22 "Parent home health agency" or "parent agency" defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 22. "Parent home health agency" or "parent agency" means the home health agency that develops and maintains administrative and fiscal control over branch offices. *(Indiana State Department of Health; 410 IAC 17-9-22)*

410 IAC 17-9-23 "Licensed practical nurse" defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1; IC 25-23

Sec. 23. "Licensed practical nurse" means a person who is licensed as a practical nurse pursuant to IC 25-23. *(Indiana State Department of Health; 410 IAC 17-9-23)*

410 IAC 17-9-24 "Registered nurse" defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1; IC 25-23

Sec. 24. "Registered nurse" means a nurse who is licensed as a registered nurse pursuant to IC 25-23. *(Indiana State Department of Health; 410 IAC 17-9-24)*

410 IAC 17-9-25 "Social work assistant" defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 25. "Social work assistant" means an individual who has a baccalaureate degree in psychology, sociology, or other field related to social work, and has had at least one (1) year of social work experience in a health care setting and is supervised by a social worker. *(Indiana State Department of Health; 410 IAC 17-9-25)*

410 IAC 17-9-26 "Social worker" defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1; IC 25-23

Sec. 26. "Social worker" means a person who has a master's degree from a school of social work accredited by

the Council on Social Work Education, and who has one (1) year of social work experience in a health care setting. (*Indiana State Department of Health; 410 IAC 17-9-26*)

410 IAC 17-9-27 “Speech language pathologist” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1; IC 25-35.6

Sec. 27. “Speech language pathologist” means an individual who is licensed to practice speech language pathology pursuant to IC 25-35.6. (*Indiana State Department of Health; 410 IAC 17-9-27*)

410 IAC 17-9-28 “Summary report” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 28. “Summary report” means a clinical synopsis of the pertinent factors from the clinical notes regarding a patient requiring a medical plan of care, which is submitted as a report to the physician. (*Indiana State Department of Health; 410 IAC 17-9-28*)

410 IAC 17-9-29 “Supervision” defined

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 29. “Supervision” means guidance to a subordinate by a qualified health care professional for the accomplishment of a function or activity. Supervision shall be evidenced by documentation that demonstrates consistent, meaningful interaction and guidance between the qualified health care professional and his or her subordinate. (*Indiana State Department of Health; 410 IAC 17-9-29*)

SECTION 2. 410 IAC 17-10 IS ADDED TO READ AS FOLLOWS:

Rule 10. Home Health Licensure

410 IAC 17-10-1 Licensure

Authority: IC 16-27-1-7
Affected: IC 5-2-5; IC 16-20; IC 16-22-8; IC 16-27-1; IC 25-22.5

Sec. 1. (a) No home health agency shall be opened, operated, managed, maintained, or otherwise conduct business without a license issued by the department.

(b) A license is required for any home health agency providing care in Indiana where the parent agency is located in a state other than Indiana. The home health agency must be authorized by the secretary of state to conduct business in Indiana and have a branch office located in Indiana.

(c) Application for a license to operate a home health agency shall be made on a form provided by the department and shall be accompanied by a nonrefundable fee of one hundred dollars (\$100).

(d) Disclosure of ownership and management information must be made to the department at the time of the home health agency’s initial request for licensure, for each survey, and at the time of any change in ownership or management. The disclosure must include the following:

- (1) The name and address of all persons having at least five percent (5%) ownership or controlling interest in the home health agency.
- (2) The name and address of each person who is an officer, a director, a managing agent, or a managing employee of the home health agency.
- (3) The name and address of the corporation, association, or other company that is responsible for the management of the home health agency, and the name and address of the chief executive officer and the chairman or equivalent position of the governing body of that corporation, association, or other legal entity responsible for the management of the home health agency.

(e) After receiving a completed application, the nonrefundable fee required by subsection (c), and disclosure of ownership and management information, the department may issue a letter of approval for operating a home health agency for a period of up to ninety (90) days pending an on-site inspection. In determining whether to issue the letter of approval, the department shall consider the following factors:

- (1) Whether the department has filed an action against an agency owned or operated by the applicant that resulted in:
 - (A) the revocation of a license;
 - (B) the denial or renewal of a license;
 - (C) the issuance or renewal of a probationary license; or
 - (D) the payment of a civil penalty.
- (2) Whether the department has issued an order against an agency owned or operated by the applicant.
- (3) Whether an agency owned or operated by the applicant has surrendered its license to the department.
- (4) Whether any injunction has been issued against an agency owned or operated by the applicant.
- (5) Whether an agency owned or operated by the applicant has operated in substantial violation of this rule or any other law governing home health agencies at any time within two (2) years immediately preceding the date that the applicant applied for a license.

(f) The department may extend this ninety (90) day period for a total of one hundred twenty (120) days in fifteen (15) day increments. Such decision to grant an extension shall take into consideration the health, safety, and welfare of the citizens the home health agency serves and the individual circumstances warranting the need for the extension. The home health agency must provide the service or services that have been specified on the application prior to the inspection and must have a minimum of

Proposed Rules

three (3) patients for record review. Record review may consist of both open and closed patient files.

(g) In determining whether to issue the initial license to operate a home health agency, the department may consider the factors described under subsection (e) and the results of the initial survey.

(h) The license shall relate back to and reflect the date of the first day of the ninety (90) day letter issued by the department.

(i) In determining whether to renew a license to operate a home health agency, the department may consider the factors described under subsection (e) of this rule and any actions pending against the home health agency.

(j) In conducting a survey, a surveyor shall receive copies of any and all documents necessary to make a determination of compliance. The surveyor may make copies with permission of the home health agency, or supervise any copying process to ensure that photocopies are true and accurate. At the sole discretion of the department and for good cause shown, the home health agency may be granted up to twenty-four (24) hours to produce documents requested by the surveyor.

(k) A home health agency may apply to provide a service that was not listed in its application or renewal application by notifying the department in writing of the new service, the date the service is intended to be offered and all supporting documentation that shows the home health agency is qualified to provide the additional service. Such documentation includes, but is not limited to, the following:

- (1) Personnel qualifications and licensing.
- (2) Limited criminal history from the Indiana central repository established by IC 5-2-5.
- (3) Procedures for the supervision of personnel.
- (4) Contracts between the home health agency and any person offering the new service.
- (5) Records of physical exams showing that personnel are free of communicable disease. In the event the initial information submitted is not sufficient for the department to determine the home health agency's compliance regarding the new service, the department will inform the home health agency of the additional documents required. A home health agency may not offer additional services until it has received approval from the department to do so.

(l) The following are not required to be licensed as a home health agency:

- (1) A physician licensed under IC 25-22.5.
- (2) An individual whose permanent residence is in the patient's residence or who is a member of the patient's immediate family.

(3) Incidental services provided by licensed health facilities to their patients.

(4) An employee of a person holding a license under IC 16-27-1 who provides home health services only as an employee of the licensed person.

(5) A local health department established under IC 16-20.

(6) A health care professional who provides one health service through a contract with a person licensed under IC 16-27-1.

(7) A durable medical equipment supply company that furnishes equipment but provides no home health services to persons in their homes.

(8) A drugstore or wholesale medical supply company that furnishes no home health services to persons in their home.

(9) A volunteer who provides home health aide services without compensation.

(10) An individual health care professional who provides professional services to a patient in the temporary or permanent residence of the patient.

(m) Except as provided in 410 IAC 17-11-5, each license shall be for a term of one (1) year and shall expire one (1) year from the date of issuance. The licensee shall notify the department in writing thirty (30) days in advance of closing or selling the home health agency.

(n) Each license shall be issued only for the home health agency named in the application and shall not be transferred or assigned. Upon sale, assignment, lease, or other transfer, voluntary or involuntary, including those transfers that qualify as changes of ownership, a new owner or person in interest shall obtain a license from the department prior to maintaining, operating, or conducting a home health agency.

(o) The licensee shall submit an annual activity report to the department on a form provided by the department.

(p) Surveys may be, but are not limited to, the following:

- (1) Unannounced surveys conducted annually for compliance.
- (2) Post survey revisits conducted based on a home health agency's plan of correction and for the purpose of determining compliance.
- (3) Patient care complaints.

(Indiana State Department of Health; 410 IAC 17-10-1)

SECTION 3. 410 IAC 17-11 IS ADDED TO READ AS FOLLOWS:

Rule 11. State Administrative Actions

410 IAC 17-11-1 Actions by the commissioner

Authority: IC 16-27-1-7

Affected: IC 16-27-1

Sec. 1. The commissioner of the department may take one (1) or more of the following actions on any ground listed in section 2 of this rule:

- (1) Issue a letter of correction.
- (2) Issue a probationary license.
- (3) Conduct a resurvey.
- (4) Deny a license or renewal of a license.
- (5) Revoke a license.
- (6) Impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000).

(Indiana State Department of Health; 410 IAC 17-11-1)

410 IAC 17-11-2 Grounds for actions by the commissioner

Authority: IC 16-27-1-7
Affected: IC 4-21.5; IC 16-27-1

Sec. 2. The commissioner may take action under section 1 of this rule on any of the following grounds:

- (1) Violation of any of the provisions of IC 16-27 or this article.
- (2) Permitting, aiding, or abetting the commission of an illegal act in a home health agency.
- (3) Conduct or practice found by the department to be detrimental to the welfare of the patients of the home health agency.

(Indiana State Department of Health; 410 IAC 17-11-2)

410 IAC 17-11-3 Renewal of home health licensure

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 3. An application for renewal of license shall be filed with the department at least sixty (60) days prior, but not sooner than ninety (90) days before, the expiration date of the current license. *(Indiana State Department of Health; 410 IAC 17-11-3)*

410 IAC 17-11-4 Civil penalties

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 4. (a) The commissioner may commence an action under IC 16-27-1 to levy civil penalties against a person who:

- (1) fails to comply with IC 16-27 or this article; or
- (2) interferes with or obstructs the department or its designated agent in the performance of duties pursuant to IC 16-27-1.

(b) A monetary civil penalty may be sought for each documented violation of IC 16-27-1 or this article. Monetary civil penalties issued may not exceed ten thousand dollars (\$10,000) per violation.

(c) In determining the seriousness of the violation and the specific amount of the civil penalty to be sought for each

violation, the commissioner may consider, but is not limited to, the following:

- (1) The potential for harm or imminent threat to the patient's health.
- (2) The extent of deviation from statutory or regulatory requirements.
- (3) The degree of willfulness or negligence.
- (4) The history of noncompliance.

(d) The absence of direct harm will not necessarily result in assessment of a lower penalty for a violation. *(Indiana State Department of Health; 410 IAC 17-11-4)*

410 IAC 17-11-5 Probationary license

Authority: IC 16-27-1-7
Affected: IC 16-27-1-12

Sec. 5. A probationary license may be issued pursuant to IC 16-27-1-12 for three (3) months. The probationary license may be reissued but not more than three (3) probationary licenses may be issued during a twelve (12) month period. The issuance of a probationary license results in the automatic expiration of any other license held under this article. *(Indiana State Department of Health; 410 IAC 17-11-5)*

SECTION 4. 410 IAC 17-12 IS ADDED TO READ AS FOLLOWS:

Rule 12. Home Health Administration and Management

410 IAC 17-12-1 Home health agency administration and management

Authority: IC 16-27-1-7
Affected: IC 16-27-1; IC 16-27-2

Sec. 1. (a) Organization, services furnished, administrative control, and lines of authority for the delegation of responsibility down to the patient care level shall be clearly set forth in writing and be readily identifiable. Administrative and supervisory responsibilities shall not be delegated to another agency or organization, and all services not furnished directly, including services provided through a branch office, shall be monitored and controlled by the parent agency.

(b) A governing body, or designated person or persons so functioning, shall assume full legal authority and responsibility for the operation of the home health agency. The governing body shall appoint a qualified administrator, adopt and periodically review written bylaws or an acceptable equivalent, and oversee the management and fiscal affairs of the home health agency.

(c) An individual need not be a home health agency employee or be present full time at the home health agency in order to qualify as its administrator. The administrator, who may also be the supervising physician or registered

Proposed Rules

nurse required by subsection (d), shall do the following:

- (1) Organize and direct the home health agency's ongoing functions.
- (2) Maintain ongoing liaison among the governing body and the staff.
- (3) Employ qualified personnel and ensure adequate staff education and evaluations.
- (4) Ensure the accuracy of public information materials and activities.
- (5) Implement a budgeting and accounting system.
- (6) Ensure that the home health agency meets all rules and regulations for licensure.
- (7) Upon request, make available to the commissioner or his designated agent all:
 - (A) reports;
 - (B) records;
 - (C) minutes;
 - (D) documentation;
 - (E) information; and
 - (F) files;

required to determine compliance within seventy-two (72) hours of such request or, in the event such a request is made in conjunction with a survey, by the time the surveyor exits the home health agency, whichever is sooner.

- (8) Ensure that a qualified person is authorized in writing to act in the administrator's absence.

(d) A physician or a registered nurse who has two (2) years of nursing experience, with at least one (1) year of supervisory or administrative experience, shall supervise and direct nursing and other therapeutic services. Such person or similarly qualified alternate shall be on the premises or capable of being reached immediately by phone, pager, or other means. In addition, the person must be able to respond to an emergency, provide guidance to staff, answer questions, and resolve issues within a reasonable amount of time, given the emergency or issue that has been raised.

(e) The administrator shall be responsible for an ongoing quality assurance program designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, resolve identified problems, and improve patient care.

(f) Personnel practices for employees shall be supported by written policies. All employees caring for patients in Indiana shall be subject to Indiana licensure, certification, or registration required to perform the respective service. Personnel records of employees who deliver home health services shall be kept current and shall include documentation of orientation to the job, including the following:

- (1) Receipt of job description.
- (2) Qualifications.

- (3) A copy of limited criminal history pursuant to IC 16-27-2.
- (4) A copy of current license, certification or registration.
- (5) Annual performance evaluations.

(g) Personnel records of the supervising nurse, appointed pursuant to subsection (d), shall be kept current and shall include a copy of the following:

- (1) Limited criminal history pursuant to IC 16-27-2.
- (2) Nursing license.
- (3) Annual performance evaluations.
- (4) Documentation of orientation to the job.

Performance evaluations required by this subsection must be performed every nine (9) to fifteen (15) months of active employment.

(h) Each employee who will have direct patient contact shall have a physical examination by a physician or nurse practitioner no more than one hundred eighty (180) days before the date that the employee has direct patient contact. The physical examination shall be of sufficient scope to ensure that the employee will not spread infectious or communicable diseases to patients.

(i) The home health agency shall require all employees who will have direct patient contact to complete a PPD (mantoux) skin test for tuberculosis no more than thirty (30) days before the date that the employee has direct patient contact and annually thereafter for negative findings. Positive findings shall require appropriate clinical follow-up before the employee has direct patient contact, but no repeat skin test. A physician shall advise and approve policies regarding positive outcomes. The home health agency shall follow the Centers for Disease Control and Prevention guidelines for administering the tuberculin skin test. These guidelines are the "Core Curriculum on Tuberculosis", Chapter IV(B), Fourth Edition (2000).

(j) The information obtained from the physical examinations required by subsection (h) and PPD (mantoux) skin tests and clinical follow-ups required by subsection (i) must be maintained in separate medical files and treated as confidential medical records, except as provided in subsection (k):

(k) The following records shall be made available, on request, to the department for review:

- (1) Personnel records and policies that document the home health agency's compliance with subsection (f).
- (2) Records of physical examinations that document the agency's compliance with subsection (h).
- (3) Records of PPD (mantoux) skin tests, the results of the skin tests, appropriate clinical follow-up for positive findings, and any other records that document the home health agency's compliance with subsection (i).

(l) The department shall treat the information described in subsection (k) as confidential medical records and use it only for the purposes for which it was obtained.

(m) Policies and procedures shall be written and implemented for the control of communicable disease in compliance with applicable federal and state laws. (*Indiana State Department of Health; 410 IAC 17-12-1*)

410 IAC 17-12-2 Quality assessment and performance improvement

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Sec. 2. (a) The home health agency must develop, implement, maintain, and evaluate a quality assessment and performance improvement program. The program must reflect the complexity of the home health organization and services (including those services provided directly or under arrangement). The home health agency must take actions that result in improvements in the home health agencies performance across the spectrum of care. The home health agency's quality assessment and performance improvement program must use objective measures.

(b) The home health agency shall provide at least one (1) of the following services:

- (1) Nursing treatment and procedure.
- (2) Home health aide services.
- (3) Physical therapy.
- (4) Speech-language pathology.
- (5) Occupational therapy.
- (6) Social services.

(c) In all cases involving the provision of home health aide services, the home health agency shall provide case management by a health care professional acting within the scope of his or her practice. Such case management shall include an initial home visit for assessment of a patient's needs to determine the type, appropriateness, and adequacy of requested service, and the development of the patient care plan.

(d) If personnel under contracts are used by the home health agency, there shall be a written contract between those personnel and the home health agency that specifies the following:

- (1) That patients are accepted for care only by the primary home health agency.
- (2) The services to be furnished.
- (3) The necessity to conform to all applicable home health agency policies including personnel qualifications.
- (4) The responsibility for participating in developing plans of care.
- (5) The manner in which services will be controlled, coordinated, and evaluated by the primary home health agency.
- (6) The procedures for submitting clinical notes, scheduling of visits, and conducting periodic patient evaluation.

(7) The procedures for payment for services furnished under the contract.

(e) Services furnished under arrangements are subject to a written contract conforming with the requirements specified in subsection (d).

(f) When contracting temporary services from another licensed home health agency, organization, or independent contractor, the personnel records shall be maintained at the office of the employer and shall be available to the home health agency upon two (2) hours' notice.

(g) All personnel providing services shall maintain effective communications to assure that their efforts appropriately complement one another and support the objectives of the patient's care. The means of communication and the results shall be documented in the clinical record or minutes of case conferences.

(h) The home health agency shall coordinate its services with other health or social service providers serving the patient.

(i) A home health agency must develop and implement a policy requiring a notice of discharge of service to the patient, the patient's legal representative, or other individual responsible for the patient's care at least five (5) calendar days before the services are stopped.

(j) The five (5) day period described in subsection (i) does not apply in any of the following circumstances:

- (1) The health, safety, and/or welfare of the home health agency's employees would be at immediate and significant risk if the home health agency continued to provide services to the patient.
- (2) The patient refuses the home health agency's services.
- (3) The patient's services are no longer reimbursable based on applicable reimbursement requirements and the home health agency informs the patient of community resources to assist the patient following discharge.
- (4) The patient no longer meets applicable regulatory criteria, such as lack of physician's order, and the home health agency informs the patient of community resources to assist the patient following discharge.

(k) A home health agency must continue, in good faith, to attempt to provide services during the five (5) day period described in subsection (i). If the home health agency cannot provide such services during that period, its continuing attempts to provide the services must be documented. (*Indiana State Department of Health; 410 IAC 17-12-2*)

410 IAC 17-12-3 Patient rights

Authority: IC 16-27-1-7
Affected: IC 16-27-1

Proposed Rules

Sec. 3. (a) The patient or the patient's legal representative has the right to be informed of the patient's rights through effective means of communication. The home health agency must protect and promote the exercise of these rights as follows:

(1) The home health agency shall provide the patient with a written notice of the patient's right in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of treatment.

(2) The home health agency shall maintain documentation showing that it has complied with the requirements of this section.

(b) The patient has the right to exercise his or her rights as a patient of the home health agency as follows:

(1) The patient's family or legal representative may exercise the patient's rights as permitted by law.

(2) The patient has the right to have his or her property treated with respect.

(3) The patient has the right to voice grievances regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the home health agency and must not be subjected to discrimination or reprisal for doing so.

(4) The patient has the right to place a complaint with the department regarding treatment or care furnished by a home health agency.

(5) The patient has the right to be informed about the care to be furnished, and of any changes in the care to be furnished as follows:

(A) The home health agency shall advise the patient in advance of the disciplines that will furnish care, and the frequency of visits proposed to be furnished.

(B) The patient has the right to participate in the planning of the care. The home health agency shall advise the patient in advance of the right to participate in planning the care or treatment and in planning changes in the care or treatment.

(C) The home health agency shall advise the patient of any change in the plan of care, including reasonable discharge notice.

(6) The patient has the right to confidentiality of the clinical records maintained by the home health agency. The home health agency shall advise the patient of the agency's policies and procedures regarding disclosure of clinical records.

(7) The patient or patient's legal representative have the right under Indiana law to access the patient's clinical records unless certain exceptions apply. The home health agency shall advise the patient or the patient's legal representative of its policies and procedures regarding the accessibility of clinical records.

(8) The patient has the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.

(c) The home health agency shall investigate complaints made by a patient or the patient's family or legal representative regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for the patient's property by anyone furnishing services on behalf of the home health agency, and shall document both the existence of the complaint and the resolution of the complaint.

(d) The home health agency shall make available to the patient upon request, a written notice in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of treatment, a listing of all individuals or other legal entities who have an ownership or control interest in the agency as defined in 42 CFR 420.201, 42 CFR 420.202, and 42 CFR 420.206.

(e) The home health agency must inform and distribute written information to the patient, in advance, concerning its policies on advance directives, including a description of applicable state law. The home health agency may furnish advanced directives information to a patient at the time of the first home visit, as long as the information is furnished before care is provided. (*Indiana State Department of Health; 410 IAC 17-12-3*)

SECTION 5. 410 IAC 17-13 IS ADDED TO READ AS FOLLOWS:

Rule 13. Home Health Patient Care

410 IAC 17-13-1 Patient care

Authority: IC 16-27-1-7

Affected: IC 16-27-1; IC 25

Sec. 1. (a) Patients shall be accepted for care on the basis of a reasonable expectation that the patient's health needs can be adequately met by the home health agency in the patient's place of residence. Medical care shall follow a written medical plan of care established and periodically reviewed by the physician, dentist, chiropractor, optometrist, or podiatrist as follows:

(1) The medical plan of care shall be developed in consultation with the home health agency staff and shall cover all pertinent diagnoses and include the following:

(A) Mental status.

(B) Types of services and equipment required.

(C) Frequency and duration of visits.

(D) Prognosis.

(E) Rehabilitation potential.

(F) Functional limitations.

(G) Activities permitted.

(H) Nutritional requirements.

(I) Medications and treatments.

(J) Any safety measures to protect against injury.

(K) Instructions for timely discharge or referral.

(L) Therapy modalities specifying length of treatment.

(M) Any other appropriate items.

(2) The total medical plan of care shall be reviewed by the attending physician, dentist, chiropractor, optometrist, or podiatrist, and home health agency personnel as often as the severity of the patient's condition requires, but at least once every two (2) months. The health care professional staff of the home health agency shall promptly alert the person responsible for the medical component of the patient's care to any changes that suggest a need to alter the medical plan of care. A written summary report for each patient shall be sent to the physician, dentist, chiropractor, optometrist, or podiatrist at least every two (2) months.

(b) A home health agency may accept written orders for home health services from a physician, a dentist, a chiropractor, a podiatrist, or an optometrist licensed in Indiana or in any other state. If the home health agency receives an order from a physician, dentist, chiropractor, podiatrist, or optometrist who is licensed in another state, the home health agency shall take reasonable immediate steps to determine that the:

- (1) order complies with the laws of the state where the order originated; and
- (2) individual who issued the order examined the patient and is licensed to practice in that state.

(c) All orders issued by a physician, a dentist, a chiropractor, a podiatrist, or an optometrist for home health services must meet the same requirements whether the order originates in Indiana or another state. Orders issued from another state may not exceed the authority allowed under orders from the same profession in Indiana under IC 25.

(d) Home health agency personnel shall promptly notify a patient's physician or other appropriate licensed professional staff and legal representative, if any, of any significant physical or mental changes observed or reported by the patient. In the case of a medical emergency, the home health agency must know in advance which emergency system to contact. (*Indiana State Department of Health; 410 IAC 17-13-1*)

SECTION 6. 410 IAC 17-14 IS ADDED AS FOLLOWS:

Rule 14. Home Health Care Services

410 IAC 17-14-1 Scope of services

Authority: IC 16-27-1-7

Affected: IC 16-27-1; IC 25-23-1; IC 25-35.6; IC 27-1-5

Sec. 1. (a) The home health agency shall provide nursing services by a registered nurse or a licensed practical nurse in accordance with the medical plan of care as follows:

(1) The registered nurse shall perform nursing duties in

accordance with the Indiana nurse practice act (IC 25-23). Except where services are limited to therapy only, for purposes of practice in the home health setting, the registered nurse shall do the following:

- (A) Make the initial evaluation visit.
- (B) Regularly reevaluate the patient's nursing needs.
- (C) Initiate the plan of care and necessary revisions.
- (D) Initiate appropriate preventive and rehabilitative nursing procedures.
- (E) Prepare clinical notes.
- (F) Coordinate services.
- (G) Inform the physician and other appropriate medical personnel of changes in the patient's condition and needs, counsel the patient and family in meeting nursing and related needs, participate in in-service programs, and supervise and teach other nursing personnel.
- (H) Accept and carry out physician, chiropractor, podiatrist, dentist, and optometrist orders (oral and written).
- (I) Assist the physician, chiropractor, podiatrist, dentist, or optometrist in evaluating level of function.
- (J) Direct the activities of the licensed practical nurse.
- (K) Delegate duties and tasks to licensed practical nurses and other individuals as appropriate.

(2) The licensed practical nurse shall perform duties in accordance with the Indiana Nurse Practice Act (IC 25-23). For purposes of practice in the home health setting, the licensed practical nurse shall do the following:

- (A) Provide services in accordance with agency policies.
- (B) Prepare clinical notes.
- (C) Assist the physician and/or registered nurse in performing specialized procedures.
- (D) Prepare equipment and materials for treatments observing aseptic technique as required.
- (E) Assist the patient in learning appropriate self-care techniques.
- (F) Accept and carry out physician, dentist, chiropractor, podiatrist, or optometrist orders (oral and written).
- (G) Inform the physician, dentist, chiropractor, podiatrist, or optometrist of changes in the patient's condition and needs after consulting with the supervising registered nurse.

(b) Any therapy services furnished by the home health agency shall be provided by the following:

- (1) A physical therapist or physical therapist assistant supervised by a licensed physical therapist in accordance with IC 27-1-5.
- (2) An occupational therapist or occupational therapist assistant supervised by an occupation therapist in accordance with IC 25-23.5.
- (3) A speech-language pathologist or audiologist in accordance with IC 25-35.6.

(c) The appropriate therapist listed in subsection (b) shall do the following:

Proposed Rules

- (1) Make an initial evaluation visit to the patient for whom only therapy services are required.
- (2) Review the plan of care as often as the severity of the patient's condition requires, but at least every two (2) months.
- (3) Assist the physician, chiropractor, podiatrist, dentist, or optometrist in evaluating level of function.
- (4) Help develop the plan of care (revising as necessary).
- (5) Prepare clinical notes.
- (6) Advise and consult with the family and other home health agency personnel.
- (7) Participate in in-service programs.

(d) In carrying out the responsibilities identified in subsection (c), the therapist may:

- (1) direct the activities of any therapy assistant; or
- (2) delegate duties and tasks to other individuals as appropriate.

(e) Any social services furnished by the home health agency, shall be provided by a social worker, or a social work assistant under the supervision of a social worker, and in accordance with the medical plan of care. The social worker shall do the following:

- (1) Assist the physician and other team members in understanding the significant social and emotional factors related to the health problems.
- (2) Participate in the development of the plan of care.
- (3) Prepare clinical and progress notes.
- (4) Work with the family.
- (5) Use appropriate community resources.
- (6) Participate in discharge planning and in-service programs.
- (7) Act as a consultant to other home health agency personnel.
- (8) Accept and carry out physician orders for social work services.

(f) This rule does not prohibit the provision of:

- (1) homemaker services, including shopping, laundry, cleaning, and seasonal chores;
- (2) companion type services, including transportation, letter writing, mail reading, and escort services;
- (3) assistance with cognitive tasks, including managing finances, planning activities, and making decisions;
- (4) attendant care services; or
- (5) any other services for which an individual license, certification, registration, or permit is not required under state law.

(g) Home health aides shall be supervised by a health care professional to ensure competent provision of care. Supervision of services must be within the scope of practice of the health care professional providing the supervision.

(h) Home health aides must receive continuing education.

Such continuing education shall total at least twelve (12) hours from January 1 through December 31, inclusive, with a minimum of eight (8) hours in any eight (8) of the following subject areas:

- (1) Communications skills, including the ability to read, write, and make brief and accurate oral presentations to patients, caregivers, and other home health agency staff.
- (2) Observing, reporting, and documenting patient status and the care or service furnished.
- (3) Reading and recording temperature, pulse, and respiration.
- (4) Basic infection control procedures and universal precautions.
- (5) Basic elements of body functioning and changes in body function that must be reported to an aide's supervisor.
- (6) Maintaining a clean, safe, and healthy environment.
- (7) Recognizing emergencies and knowledge of emergency procedures.
- (8) The physical, emotional, and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, the patient's privacy, and the patient's property.
- (9) Appropriate and safe techniques in personal hygiene and grooming that include the following:
 - (A) Bed bath.
 - (B) Bath, sponge, tub, or shower.
 - (C) Shampoo, sink, tub, or bed.
 - (D) Nail and skin care.
 - (E) Oral hygiene.
 - (F) Toileting and elimination.
- (10) Safe transfer techniques and ambulation.
- (11) Normal range of motion and positioning.
- (12) Adequate nutrition and fluid intake.
- (13) Medication assistance.
- (14) Any other task that the home health agency may choose to have the home health aide perform.

(i) During a home health aide's first year on the state's home health aide registry, the number of hours of training for that aide shall be a prorated portion of the usual twelve (12) and eight (8) hours.

(j) A home health aide continuing education program may be offered by any organization except a home health agency that has a probationary home health agency license.

(k) The training of home health aides pursuant to a continuing education program must be performed by or under the general supervision of a registered nurse. The home health agency shall maintain sufficient documentation to demonstrate that the continuing education requirements are met.

(l) The home health agency shall be responsible for ensuring that, prior to patient contact, the individuals who

furnish home health aide services on its behalf meet the requirements of this section as follows:

(1) The home health aide shall:

(A) have successfully completed a competency evaluation program that addresses each of the subjects listed in subsection (h); and

(B) be entered on and be in good standing on the state aide registry.

(2) The home health agency shall maintain documentation, which demonstrates that the requirements of this subsection and subsection (h) were met.

(3) If the home health agency issuing the proof of the aide's achievement of successful completion of a competency evaluation program is not the employing agency, the employing agency shall keep a copy of the competency evaluation documentation in the home health aide's employment file.

(m) The home health aide shall be assigned to a particular patient by a registered nurse (or therapist in therapy only cases). The home health aide may not be assigned to perform additional tasks not included in the original competency evaluation until he or she has successfully been evaluated as competent in that task. The home health aide must report any changes observed in the patient's conditions and needs to the supervisory nurse or therapist.

(n) A registered nurse, or therapist in therapy only cases, shall make the initial visit to the patient's residence and make a supervisory visit at least every thirty (30) days, either when the home health aide is present or absent, to observe the care, to assess relationships, and to determine whether goals are being met. (*Indiana State Department of Health; 410 IAC 17-14-1*)

SECTION 7. 410 IAC 17-15 IS ADDED TO READ AS FOLLOWS:

Rule 15. Home Health Clinical Records

410 IAC 17-15-1 Clinical records

Authority: IC 16-27-1-7

Affected: IC 16-27-1; IC 16-39-7-1

Sec. 1. (a) Clinical records containing pertinent past and current findings in accordance with accepted professional standards shall be maintained for every patient as follows:

(1) The medical plan of care and appropriate identifying information.

(2) Name of the physician, dentist, chiropractor, podiatrist, or optometrist.

(3) Drug, dietary, treatment, and activity orders.

(4) Signed and dated clinical notes contributed to by all assigned personnel. Clinical notes shall be written the day service is rendered and incorporated within fourteen (14) days.

(5) Copies of summary reports sent to the person responsible for the medical component of the patient's care.

(6) A discharge summary.

(7) All entries must be legible, clear, complete, and appropriately authenticated and dated. Authentication must include signatures or a secured computer entry.

(b) Original clinical records shall be retained for the length of time as required by IC 16-39-7 after home health services are terminated by the home health agency. Policies shall provide for retention even if the home health agency discontinues operations.

(c) Clinical record information shall be safeguarded against loss or unauthorized use. Written procedures shall govern use and removal of records and conditions for release of information. Patient's written consent shall be required for release of information not authorized by law. Current service files shall be maintained at the parent or branch office from which the services are provided until the patient is discharged from service. Closed files may be stored away from the parent or branch office provided they can be returned to the office within seventy-two (72) hours. Closed files do not become current service files if the patient is readmitted to service. (*Indiana State Department of Health; 410 IAC 17-15-1*)

SECTION 8. 410 IAC 17-16 IS ADDED TO READ AS FOLLOWS:

Rule 16. Incorporation by Reference

410 IAC 17-16-1 Incorporation by reference

Authority: IC 16-27-1-7

Affected: IC 16-27-1

Sec. 1. Chapter IV(B) of "Core Curriculum on Tuberculosis, Fourth Edition, (2000)" is hereby incorporated by reference. Copies of this publication may be obtained by writing to Technical Information Services, Centers for Prevention Services, Centers for Disease Control, Mail Stop E06, Atlanta, Georgia 30333. Copies may also be obtained from the Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46202-3006. (*Indiana State Department of Health; 410 IAC 17-16-1*)

SECTION 9. THE FOLLOWING ARE REPEALED: 410 IAC 17-1.1; 410 IAC 17-2; 410 IAC 17-3; 410 IAC 17-4; 410 IAC 17-5; 410 IAC 17-6; 410 IAC 17-7; 410 IAC 17-8.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 26, 2001 at 2:00 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana State Department of Health will hold a

Proposed Rules

public hearing on proposed new rules to protect the health, safety, and welfare of patients, govern the qualifications of applicants for licenses, govern the operating policies, supervision, and maintenance of service records of home health agencies, and govern the procedure for issuing, renewing, denying, or revoking a license to a home health agency. Repeals 410 IAC 17-1.1, 410 IAC 17-2, 410 IAC 17-3, 410 IAC 17-4, 410 IAC 17-5, 410 IAC 17-6, 410 IAC 17-7, and 410 IAC 17-8. Copies of these rules are now on file at the Health Care Regulatory Services Commission, Indiana State Department of Health, 2 North Meridian Street, Fifth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule LSA Document #01-168

DIGEST

Amends 410 IAC 15-2.5-7 and 410 IAC 15-2.7-1 to update the guidelines for design and construction of hospital and health care facilities. Effective 30 days after filing with the secretary of state.

410 IAC 15-2.5-7

410 IAC 15-2.7-1

SECTION 1. 410 IAC 15-2.5-7 IS AMENDED TO READ AS FOLLOWS:

410 IAC 15-2.5-7 Physical plant, equipment maintenance, and environmental services

Authority: IC 16-21-1-7

Affected: IC 16-21-1

Sec. 7. (a) The center shall be constructed, arranged, and maintained to ensure the safety of the patient and to provide facilities for services authorized under the center license as follows:

(1) The plant operations and maintenance service, equipment maintenance, and environmental services must be as follows:

(A) Staffed to meet the scope of the services provided.

(B) Under the direction of a person or persons qualified by education, training, or experience according to center policy, approved by the governing body.

(2) The center shall provide a physical plant and equipment that meets the statutory requirements and regulatory provisions of the state department of fire and building services,

675 IAC 22, Indiana fire prevention codes, and 675 IAC 13, Indiana building codes.

(3) There must be emergency power and lighting in accordance with National Fire Protection Association (NFPA) 99.

(4) In new construction, renovations, and additions, the center site and facilities, or nonlicensed facilities acquired for the purpose of providing center services shall meet the following:

(A) The ~~1996-1997~~ **2001** edition of the national "Guidelines for Design and Construction of ~~Hospitals~~ **Hospital and Health Care Facilities**" (Guidelines).

(B) All building, fire safety, and handicapped accessibility codes, and rules adopted and administered by the state building commission shall apply to all facilities covered by this rule and take precedence over any building, fire safety, or handicapped accessibility requirements of the Guidelines.

(C) When renovation or replacement work is done within an existing facility, all new work or additions, or both, shall comply, insofar as practical, with applicable sections of the Guidelines and for certification with appropriate parts of NFPA 101.

(D) Water supply and sewage disposal services shall be obtained from municipal or community services.

(E) As early in the construction, addition, and/or renovation project as possible, the functional and operational description shall be submitted to the division. This submission shall consist of, but not be limited to, the following:

(i) Functional program narrative as established in the Guidelines.

(ii) Schematics, based upon the functional program, consisting of drawings, (as single-line plans), outline specifications, and other documents illustrating the scale and relationship of project components.

(F) Prior to the start of construction, addition, and/or renovation projects, detailed architectural and operational plans for construction shall be submitted to the plan review division of the department of fire and building services and to the division of sanitary engineering of the department as follows:

(i) Working drawings, project manuals, and specifications shall be included.

(ii) Prior to submission of final plans and specifications, recognized standards and codes, including infection control standards, shall be reviewed as required in section 1(e)(2) of this rule.

(iii) All required approvals shall be obtained from fire and building services and final approval from the division of sanitary engineering of the department prior to issuance of the occupancy letter by the division.

(G) Upon receipt of a plan release from the fire and building commissioner and documentation of a completed plan review by the division of sanitary engineering of the department, a licensure application shall be submitted to the division on the form approved and provided by the department.

(H) Documentation from the state building commissioner

that the center is in compliance with the fire safety rules of the fire prevention and building safety commission shall be furnished to the division with the licensure application.

(b) The condition of the physical plant and the overall center environment must be developed and maintained in such a manner that the safety and well-being of patients are assured as follows:

(1) No condition in the center or on the grounds may be maintained which may be conducive to the harboring or breeding of insects, rodents, or other vermin.

(2) No condition may be created or maintained which may result in a hazard to patients, public, or employees.

(3) Provision must be made for the periodic inspection, preventive maintenance, and repair of the physical plant and equipment by qualified personnel as follows:

(A) Operation, maintenance, and spare parts manuals must be available, along with training and/or instruction of the appropriate center personnel, in the maintenance and operation of fixed and movable equipment.

(B) All mechanical equipment (pneumatic, electric, sterilizing, or other) must be on a documented maintenance schedule of appropriate frequency in accordance with acceptable standards of practice or the manufacturer's recommended maintenance schedule.

(C) Operational and maintenance control records must be established and analyzed at least triennially. These records must be readily available on the premises.

(D) Maintenance and repairs must be carried out in accordance with applicable codes, rules, standards, and requirements of local jurisdictions, administrative building council, the state fire marshal, and the department.

(4) The patient care equipment requirements are as follows:

(A) There must be sufficient patient care equipment and space to assure the safe, effective, and timely provision of the available services to patients.

(B) All patient care equipment must be in good working order and regularly serviced and maintained as follows:

(i) All patient care equipment must be on a documented maintenance schedule of appropriate frequency in accordance with acceptable standards of practice or the manufacturer's recommended maintenance schedule.

(ii) There must be evidence of preventive maintenance on all patient care equipment.

(iii) Appropriate records must be kept pertaining to equipment maintenance, repairs, and electrical current leakage checks and analyzed at least triennially.

(iv) Defibrillators must be discharged at least in accordance with manufacturers' recommendations, and a discharge log with initialed entries must be maintained.

(5) The building(s), including fixtures, walls, floors, ceiling, and furnishings throughout, must be kept clean and orderly in accordance with current standards of practice, including the following:

(A) Environmental services must be provided in such a way

as to guard against transmission of disease to patients, health care workers, the public, and visitors by using the current principles of the following:

(i) Asepsis.

(ii) Cross-contamination prevention.

(iii) Safe practice.

(B) Refuse, biohazards, infectious waste, and garbage must be collected, transported, sorted, and disposed of by methods, which will minimize nuisances or hazards according to federal, state, and local laws and rules.

(c) A safety management program must include, but not be limited to, the following:

(1) A review of safety functions by a committee appointed by the chief executive officer which includes representatives from administration and patient care services.

(2) An ongoing center-wide process to evaluate and collect information about hazards and safety practices to be reviewed by the committee.

(3) The safety program includes, but is not limited to, the following:

(A) Patient safety.

(B) Health care worker safety.

(C) Public and visitor safety.

(4) A written fire control plan that contains provisions for the following:

(A) Prompt reporting of fires.

(B) Extinguishing of fires.

(C) Protection of patients, personnel, and guests.

(D) Evacuation.

(E) Cooperation with firefighting authorities.

(F) Fire drills.

(5) Maintenance of written evidence of regular inspection and approval by state or local fire control agencies in accordance with center policy and state and local regulations.

(6) Emergency and disaster preparedness coordinated with appropriate community, state, and federal agencies.

(Indiana State Department of Health; 410 IAC 15-2.5-7; filed Dec 1, 1999, 3:44 p.m.: 23 IR 793; errata filed Feb 15, 2000, 8:05 a.m.: 23 IR 1657)

SECTION 2. 410 IAC 15-2.7-1, AS AMENDED AT 24 IR 922, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

410 IAC 15-2.7-1 Incorporation by reference

Authority: IC 16-21-1-7

Affected: IC 16-21-1

Sec. 1. (a) When used in this article, references to the following publications shall mean the version of that publication listed and are hereby incorporated by reference:

(1) Guidelines for Design and Construction of **Hospitals Hospital** and Health Care Facilities (~~1996-1997~~ **(2001** Edition). Copies are available from the American Institute of Architects, 1735 New York Avenue Northwest, Washington, D.C. 20006. Local purchase may be made from the Architec-

Proposed Rules

tural Center Bookstore, 47 South Pennsylvania Avenue, Indianapolis, Indiana 46204.

(2) National Fire Protection Association (NFPA) 99, Health Care Facilities (1993 Edition). Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P. O. Box 1901, Quincy, Massachusetts 02260-9904.

(3) National Fire Protection Association (NFPA) 101, Life Safety Code Handbook (1985 Edition for Medicare/Medicaid certified nonaccredited hospitals, and the 1991 Edition for Medicare/Medicaid certified hospitals that are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P. O. Box 1901, Quincy, Massachusetts 02269-9904.

(4) National Committee on Radiation Protection (NCRP) Reports, Number 49, "Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies Up to 10 MeV: (September 15, 1976, Edition). Copies may be obtained from the National Council on Radiation Protection and Measurements, 7910 Woodmont Avenue, Washington, D.C. 20014.

(5) National Committee on Radiation Protection (NCRP) Reports, Number 102, "Medical X-ray, Electron Beam and Gamma Ray Protection for Energies Up to 50 MeV (Equipment Design, Performance and Use)", June 30, 1989, Edition). Copies may be obtained from the National Council on Radiation Protection and Measurements, 7910 Woodmont Avenue, Washington, D.C. 20014.

(6) 42 CFR 493 (Effective October 1, 1993, Edition).

(7) 21 CFR 606 (April 1, 1994, Edition).

(8) 21 CFR 640 (April 1, 1994, Edition).

(b) Federal rules which have been incorporated by reference do not include any later amendments than those specified in the incorporated citation. Sales of the Code of Federal Regulations are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. All incorporated material is available for public review at the department. (*Indiana State Department of Health; 410 IAC 15-2.7-1; filed Dec 1, 1999, 3:44 p.m.: 23 IR 795; errata filed Feb 15, 2000, 8:05 a.m.: 23 IR 1658; filed Nov 13, 2000, 11:17 a.m.: 24 IR 992*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 24, 2001 at 2:30 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on proposed amendments to update the guidelines for design and construction of hospital and health care facilities. Copies of these rules are now on file at the Health Care Regulatory Services Commission, Indiana State Department of Health, 2 North Meridian Street, Fifth Floor and

Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule LSA Document #01-169

DIGEST

Amends 410 IAC 15-1.5-8 and 410 IAC 15-1.7-1 to update the guidelines for design and construction of hospital and health care facilities. Effective 30 days after filing with the secretary of state.

410 IAC 15-1.5-8

410 IAC 15-1.7-1

SECTION 1. 410 IAC 15-1.5-8 IS AMENDED TO READ AS FOLLOWS:

410 IAC 15-1.5-8 Physical plant, maintenance, and environmental services

Authority: IC 16-21-1-7

Affected: IC 16-21-1

Sec. 8. (a) The hospital shall be constructed, arranged, and maintained to ensure the safety of the patient and to provide facilities for services authorized under the hospital license as follows:

(1) The plant operations and maintenance service, equipment maintenance, and environmental service shall be:

(A) staffed to meet the scope of the services provided; and

(B) under the direction of a person or persons qualified by education, training, or experience.

(2) There shall be a safety officer designated to assume responsibility for the safety program.

(3) The hospital shall provide a physical plant and equipment that meets the statutory requirements and regulatory provisions of the state department of fire and building services, including 675 IAC 22, Indiana fire prevention codes, and 675 IAC 13, Indiana building codes.

(b) The condition of the physical plant and the overall hospital environment shall be developed and maintained in such a manner that the safety and well-being of patients are assured as follows:

(1) No condition in the facility or on the grounds shall be maintained which may be conducive to the harborage or breeding of insects, rodents, or other vermin.

(2) No condition shall be created or maintained which may result in a hazard to patients, public, or employees.

(3) There shall be emergency power and lighting in accordance with National Fire Protection Association (NFPA) 99.

(4) There shall be a plan for emergency fuel and water supply.

(5) Provision shall be made for the periodic inspection, preventive maintenance, and repair of the physical plant and equipment by qualified personnel as follows:

(A) Operation, maintenance, and spare parts manuals shall be available, along with training or instruction of the appropriate personnel, in the maintenance and operation of the fixed and movable equipment.

(B) Operational and maintenance control records shall be established and analyzed periodically. These records shall be readily available on the premises.

(C) Maintenance and repairs shall be carried out in accordance with applicable codes, rules, standards, and requirements of local jurisdictions, the administrative building council, the state fire marshal, and the department.

(c) In new construction, renovations, and additions, the hospital site and facilities, or nonlicensed facilities acquired for the purpose of providing hospital services, shall meet the following:

(1) The ~~1992~~ **2001** edition of the national "Guideline for Construction and Equipment of ~~Hospitals~~ **Hospital and Medical Facilities**" (Guidelines).

(2) All building, fire safety, and handicapped accessibility codes and rules adopted and administered by the state building commissioner shall apply to all facilities covered by this rule and take precedence over any building, fire safety, or handicapped accessibility requirements of the Guidelines.

(3) When renovation or replacement work is done within an existing facility, all new work or addition, or both, shall comply, insofar as practical, with applicable sections of the Guidelines and for certification with appropriate parts of National Fire Protection Association (NFPA) 101.

(4) Proposed sites shall be located away from detrimental nuisances, well drained, and not subject to flooding. A site survey and recommendations shall be obtained from the department prior to site development.

(5) Water supply and sewage disposal services shall be obtained from municipal or community services. Outpatient facilities caring for patients less than twenty-four (24) hours that do not provide surgery, laboratory, or renal dialysis services may be served by approved private on-site septic tank absorption field systems.

(6) Site utility installations for water, sprinkler, sanitary, and storm sewer systems, and wells for potable emergency water supplies shall comply with applicable sections of Bulletin S.E. 13, "On-Site Water Supply and Waste-water Disposal for Public and Commercial Establishments", 1988 edition.

(7) As early in the construction, addition, or renovation project as possible, the functional and operational description

shall be submitted to the division. This submission shall consist of, but not be limited to, the following:

(A) Functional program narrative as established in the Guidelines.

(B) Schematics, based upon the functional program, consisting of drawings (as single-line plans), outline specifications, and other documents illustrating the scale and relationship of project components.

(8) Prior to the start of construction, addition, and/or renovation projects, detailed architectural and operational plans for construction shall be submitted to the plan review division of the department of fire and building services and to the division of sanitary engineering of the department, as follows:

(A) Working drawings, project manual, and specifications shall be included.

(B) Prior to submission of final plans and specifications, recognized standards and codes, including infection control standards, shall be reviewed as required in section 2(f)(2) of this rule.

(C) All required approvals shall be obtained from the state building commissioner and final approval from the division of sanitary engineering of the department prior to issuance of the occupancy letter by the division.

(9) All back flow prevention devices shall be installed as required by 327 IAC 8-10 and the current edition of the Indiana plumbing code. Such devices shall be listed as approved by the department.

(10) Upon receipt of a design release from the state building commissioner and documentation of a completed plan review by the division of sanitary engineering of the department, a licensure application shall be submitted to the division on the form approved and provided by the department.

(11) Documentation from the state building commissioner that the hospital is in compliance with the fire safety rules of the fire prevention and building safety commission shall be furnished to the division with the licensure application.

(12) Plans for constructing, expanding, or remodeling x-ray or gamma ray facilities shall be accompanied by an evaluation of the radiation protection features by a radiation qualified expert as required by 410 IAC 5. After completion of the x-ray or gamma ray installation and prior to use, a radiation safety survey shall be performed by a radiation qualified expert to insure that the facility meets all applicable requirements of 410 IAC 5 and National Council on Radiation Protection and Measurements (NCRP) Reports Number 49 and 102.

(13) Outpatient facilities, rehabilitation facilities, psychiatric facilities, and mobile, transportable, and relocatable units which are included under the hospital license may comply with appropriate sections of the Guidelines. If not, they shall comply with the hospital section of the Guidelines.

(d) The equipment requirements are as follows:

(1) All equipment shall be in good working order and regularly serviced and maintained.

Proposed Rules

(2) There shall be sufficient equipment and space to assure the safe, effective, and timely provision of the available services to patients, as follows:

(A) All mechanical equipment (pneumatic, electric, or other) shall be on a documented maintenance schedule of appropriate frequency and with the manufacturer's recommended maintenance schedule.

(B) There shall be evidence of preventive maintenance on all equipment.

(C) Appropriate records shall be kept pertaining to equipment maintenance, repairs, and current leakage checks.

(3) Defibrillators shall be discharged at least in accordance with manufacturers recommendations and a discharge log with initialed entries shall be maintained.

(4) Electrical safety shall be practiced in all areas.

(e) The building(s), including fixtures, walls, floors, ceiling, and furnishings throughout, shall be kept clean and orderly in accordance with current standards of practice as follows:

(1) Environmental services shall be provided in such a way as to guard against transmission of disease to patients, health care workers, the public, and visitors by using the current principles of:

(A) asepsis;

(B) cross-infection; and

(C) safe practice.

(2) Refuse and garbage shall be collected, transported, sorted, and disposed of by methods which will minimize nuisances or hazards.

(f) The safety management program shall include, but not be limited to, the following:

(1) An ongoing hospital-wide process to evaluate and collect information about hazards and safety practices to be reviewed by the safety committee.

(2) A safety committee appointed by the chief executive officer which includes representatives from administration, patient services, and support services.

(3) The safety program, which includes, but is not limited to, the following:

(A) Patient safety.

(B) Health care worker safety.

(C) Public and visitor safety.

(D) Hazardous materials and wastes management in accordance with federal and state rules.

(E) A written fire control plan that contains provisions for the following:

(i) Prompt reporting of fires.

(ii) Extinguishing of fires.

(iii) Protection of patients, personnel, and guests.

(iv) Evacuation.

(v) Cooperation with firefighting authorities.

(F) Maintenance of written evidence of regular inspection and approval by state or local fire control agencies.

(G) Emergency and disaster preparedness coordinated with appropriate community, state, and federal agencies.

(Indiana State Department of Health; 410 IAC 15-1.5-8; filed Dec 21, 1994, 9:40 a.m.: 18 IR 1273; errata filed Feb 23, 1995, 2:00 p.m.: 18 IR 1837; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 2. 410 IAC 15-1.7-1 IS AMENDED TO READ AS FOLLOWS:

410 IAC 15-1.7-1 Incorporation by reference

Authority: IC 16-21-1-7

Affected: IC 16-21-1

Sec. 1. (a) When used in this article, references to the following publications shall mean the version of that publication listed below. The following publications are hereby incorporated by reference:

(1) Guidelines for Construction and Equipment of ~~Hospitals~~ **Hospital** and Medical Facilities (~~1992-1993~~ **(2001** Edition). Copies are available from the American Institute of Architects, 1735 New York Ave. Northwest, Washington, D.C. 20006.

(2) Bulletin S.E. 13, "On-site Water Supply and Wastewater Disposal for Public and Commercial Establishments" (1988 Edition). Copies are available from the Indiana State Department of Health, 1330 West Michigan Street, P.O. Box 1964, Indianapolis, ~~IN~~ **Indiana** 46206-1964.

(3) National Fire Protection Association (NFPA) 99, Health Care Facilities (1993 Edition). Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, ~~MA~~ **Massachusetts** 02269-9904.

(4) National Fire Protection Association (NFPA) 101, Life Safety Code Handbook (1985 Edition for Medicare/Medicaid certified nonaccredited hospitals, and the 1991 Edition for Medicare/Medicaid certified hospitals that are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)). Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, ~~MA~~ **Massachusetts** 02269-9904.

(5) National Committee on Radiation Protection (NCRP) Reports, Number 49, "Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies Up to 10 MeV", (September 15, 1976 Edition). Copies may be obtained from the National Council on Radiation Protection and Measurements, 7910 Woodmont Avenue, Washington, D.C. 20014.

(6) National Committee on Radiation Protection (NCRP) Reports, Number 102, "Medical X-ray, Electron Beam and Gamma Ray Protection for Energies Up to 50 MeV (Equipment Design, Performance and Use)", (June 30, 1989 Edition). Copies may be obtained from the National Council on Radiation Protection and Measurements, 7910 Woodmont Avenue, Washington, D.C. 20014.

- (7) 42 CFR ~~Part~~ 412, Subpart B, section 412.25, 42 CFR ~~Part~~ 412, Subpart B, section 412.27, 42 CFR ~~Part~~ 412, Subpart B, section 412.29, 42 CFR ~~Part~~ 412, Subpart B, section 412.30 (October 1, 1993 Edition).
- (8) 42 CFR ~~Part~~ 493 (October 1, 1993 Edition).
- (9) 21 CFR ~~Part~~ 606 (April 1, 1994 Edition).
- (10) 21 CFR ~~Part~~ 640 (April 1, 1994 Edition).

- 440 IAC 4.4-1-1**
- 440 IAC 4.4-2-1**
- 440 IAC 4.4-2-2**
- 440 IAC 4.4-2-3**
- 440 IAC 4.4-2-3.5**
- 440 IAC 4.4-2-4**
- 440 IAC 4.4-2-4.5**
- 440 IAC 4.4-2-5**
- 440 IAC 4.4-2-6**
- 440 IAC 4.4-2-7**
- 440 IAC 4.4-2-8**
- 440 IAC 4.4-2-9**
- 440 IAC 4.4-2-11**

(b) Federal rules, which have been incorporated by reference, do not include any later amendments than those specified in the incorporated citation. Sales of the Code of Federal Regulations are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. All incorporated material is available for public review at the Indiana state department of health. (*Indiana State Department of Health; 410 IAC 15-1.7-1; filed Dec 21, 1994, 9:40 a.m.: 18 IR 1280; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234*)

SECTION 1. 440 IAC 4.4-1-1 IS AMENDED TO READ AS FOLLOWS:

ARTICLE 4.4. ADDICTION TREATMENT SERVICES PROVIDER CERTIFICATION

440 IAC 4.4-1-1 Definitions
 Authority: IC 12-8-8-4; IC 12-23-1-6
 Affected: IC 12-7-2-11; IC 12-7-2-73

Sec. 1. The following definitions apply throughout this article:

- (1) "Accreditation" means an accrediting agency has granted approval to an entity to provide specific services after the entity has met specific requirements of the accrediting agency.
- (2) "Accrediting agency" means an agency, included on a list of accrediting agencies approved by the division, that:
 - (A) has developed clinical, financial, and organizational standards for the operation of a provider of addiction **treatment** services; and
 - (B) ~~which~~ evaluates compliance with its established standards on a regularly scheduled basis.
- (3) "Addiction **treatment** services" means a broad range of planned and continuing care, treatment, and rehabilitation, including, but not limited to, counseling, psychological, medical, and social service care designed to influence the behavior of individual alcohol abusers or drug abusers, based on an individual treatment plan.
- (4) "Alcohol abuser" means an individual who has had repeated episodes of intoxication or drinking that impair the individual's health or interfere with the individual's effectiveness on the job, at home, in the community, or in operating a motor vehicle.
- (5) "Certification" means the process used by the division to document an ~~organizations's~~ **organization's** compliance with the statutory and regulatory requirements for ~~operation~~ **operating** as a provider of addiction **treatment** services, including the issuance of a certificate if the entity is found to comply with this article.
- (6) "Credentialing body" means an organization **approved by the division** that:
 - (A) has developed training, knowledge, and skills requirements for individuals who practice the treatment of addiction problems; and
 - (B) certifies that an individual meets those requirements.
- (7) "Direct services provider" means an individual, a **con-**

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 24, 2001 at 3:00 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on proposed amendments to update the guidelines for design and construction of hospital and health care facilities. Copies of these rules are now on file at the Health Care Regulatory Services Commission, Indiana State Department of Health, 2 North Meridian Street, Fifth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
 State Health Commissioner
 Indiana State Department of Health

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

NOTE: Under P.L.215-2001, SECTION 54, the name of the Division of Mental Health is changed to Division of Mental Health and Addiction, effective July 1, 2001.

Proposed Rule
 LSA Document #01-263

DIGEST

Amends 440 IAC 4.4 concerning the certification of addiction treatment services providers to add uniform criteria for addiction treatment services programs, to define intensive outpatient services, to require entities requesting temporary regular certification to meet specific criteria, and to make technical revisions regarding time frames. Effective 30 days after filing with the secretary of state.

Proposed Rules

tractor, employee, or volunteer who provides counseling, psychological, medical, or social services **on behalf of a provider of addiction treatment services.**

(8) “Division” means the division of mental health and addiction.

(9) “Drug abuser” means an individual who:

(A) has developed a psychological or physical dependence on the effect of drugs or harmful substances; or

(B) abuses the use of drugs or harmful substances; so that the individual or society is harmed or endangered.

(10) “Entity” means any:

(A) individual;

(B) firm;

(C) corporation;

(D) partnership;

(E) association;

(F) foundation;

(G) governmental unit; or

(H) agency;

whether public or private.

(11) “Incidental service” means a minor service provided to an individual in conjunction with other nonaddiction primary services by an entity that does not hold itself out as an addiction treatment services provider.

(12) “Intensive outpatient services” means a milieu of treatment, with a combination of counseling and education activities consisting of sessions at least two (2) hours in length, occurring at least three (3) days per week for a minimum duration of four (4) weeks per consumer.

(13) “Opioid addiction treatment provider” means an entity that runs a program that furnishes a comprehensive range of assessment, rehabilitation, and treatment services using Levo-Alpha-Acetyl-Methaldol (LAAM), methadone, or other narcotic substances approved by the federal government, for the detoxification and maintenance of persons addicted to heroin or other opiate-like substances.

(14) “Outpatient services” means the provision of therapeutic activities, either to the individual or in a group/conjoint session, that are related to the outcomes described in the individual treatment plan.

(Division of Mental Health and Addiction; 440 IAC 4.4-1-1; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2400; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)

SECTION 2. 440 IAC 4.4-2-1 IS AMENDED TO READ AS FOLLOWS:

440 IAC 4.4-2-1 Certification by the division

Authority: IC 12-8-8-4; IC 12-23-1-6

Affected: IC 12-23-14

Sec. 1. (a) Every provider of addiction treatment services in Indiana must have either regular certification or outpatient certification issued by the division to provide addiction treatment services.

(b) This rule does not apply to the following:

(1) Addiction treatment services programs operated by the federal government.

(2) Prevention, education, or intervention services.

(3) Voluntary self-help groups.

(4) Any entity that provides addiction treatment services to alcohol abusers or drug abusers only as an incidental service.

(5) Programs run by the Indiana department of correction.

(6) Programs run in child caring institutions licensed by the division of family and children.

(c) An addiction treatment services provider who offers twenty-four (24) hour care must have one (1) of the following:

(1) Regular certification under this article.

(2) Residential care provider certification under 440 IAC 6 and outpatient certification under this article.

(d) An entity with a regular certification under this article is deemed a certified residential care provider under 440 IAC 6.

(e) In addition to either regular or outpatient certification, a provider must have specific approval by the division to be a methadone opioid treatment provider. The provider must comply with 21 CFR Part 291, 42 CFR 8, and all other applicable federal laws, regulations, and guidelines.

(f) Detoxification services must be provided under the supervision of:

(1) a physician; or

(2) an advanced practice; clinical nurse specialist; licensed to practice in Indiana.

(g) An entity that has applied for certification or has been certified as an addiction treatment services provider must provide information related to services or the operation of the organization as required by the division.

(h) The division shall provide annually a list of approved accrediting agencies and a list of approved credentialing bodies.

(i) A copy of the most recent certification issued by the division must be available to the public upon request. *(Division of Mental Health and Addiction; 440 IAC 4.4-2-1; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2401; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)*

SECTION 3. 440 IAC 4.4-2-2 IS AMENDED TO READ AS FOLLOWS:

440 IAC 4.4-2-2 Requirements for certification

Authority: IC 12-8-8-4; IC 12-23-1-6

Affected: IC 12-27

Sec. 2. Before commencing services, an applicant entity must be certified for regular certification or outpatient certification. The entity shall file an application with the division. The application shall contain the following:

- (1) The **legal** name of the applicant.
- (2) A description of the organizational structure and mission **statement** of the applicant, including the services to be provided and the populations to be served.
- (3) The location of all operational sites of the applicant.
- (4) A copy of the applicant's procedures to ensure protection of **client consumer** rights under IC 12-27 and confidentiality under 42 CFR ~~Part 2~~.

(5) All materials requested by the division.

(Division of Mental Health and Addiction; 440 IAC 4.4-2-2; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2401; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)

SECTION 4. 440 IAC 4.4-2-3 IS AMENDED TO READ AS FOLLOWS:

440 IAC 4.4-2-3 Regular certification

Authority: IC 12-8-8-4; IC 12-23-1-6

Affected: IC 12-23-1-6

Sec. 3. (a) To be certified and to maintain regular certification as an addiction **treatment** services provider, the entity must maintain accreditation from an accrediting agency approved by the division.

(b) The application for regular certification as an addiction **treatment** services provider must include the following:

- (1) Proof of accreditation.
- (2) Site survey recommendations from the accrediting agency.
- (3) The applicant's responses to the site survey recommendations.

(c) The provider must take any action deemed to be necessary by the division in response to the site survey issued by the accrediting agency.

(d) When the division determines that the provider meets the requirements for regular certification as set forth in this article, the division shall issue a regular certification to the provider.

(e) The regular certification expires ninety (90) days after the expiration of the entity's accreditation.

~~(f) If the entity is not yet accredited, a temporary certification may be issued for twelve (12) months. Prior to the expiration of the temporary certification, the entity must provide proof of application to an accrediting body approved by the division.~~

~~(g) Upon the verification of the application for accreditation, the temporary certification may be extended for no more than twelve (12) additional months.~~

~~(h) Before the temporary certification expires, the applicant must forward to the division:~~

- ~~(1) proof of accreditation;~~
- ~~(2) site survey recommendations from the accrediting agency;~~
- ~~(3) the applicant's responses to the site survey recommendations.~~

(Division of Mental Health and Addiction; 440 IAC 4.4-2-3; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2401; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)

SECTION 5. 440 IAC 4.4-2-3.5 IS ADDED TO READ AS FOLLOWS:

440 IAC 4.4-2-3.5 Temporary certification

Authority: IC 12-8-4; IC 12-23-1-6

Affected: IC 12-23-1-6

Sec. 3.5. (a) If the entity that has applied for regular certification is not yet accredited as an addiction treatment services provider, the entity must meet the requirement that at least one (1) of the direct service providers must be specifically credentialed in addictions counseling by a credentialing body approved by the division.

(b) Temporary certification may be issued for twelve (12) months. Prior to the expiration of the temporary certification, the entity must provide proof of application to an accrediting body approved by the division.

(c) If the applicant fails to provide proof of application to an accrediting body, or fails to maintain at least one (1) direct service provider credentialed in addictions counseling, the applicant may not reapply for regular certification until twelve (12) months after the temporary certification ends.

(d) Upon the verification of the application for accreditation, and continuing to meet the requirements set forth in this section, the temporary certification may be extended for no more than twelve (12) additional months.

(e) Before the extended temporary certification expires, the applicant must forward to the division the following:

- (1) Proof of accreditation.**
- (2) Site survey recommendations from the accrediting agency.**
- (3) The applicant's responses to the site survey recommendations.**
- (4) Any other materials requested by the division as a part of the application process.**

(f) If the applicant fails to achieve accreditation within twenty-four (24) months:

- (1) the applicant may not reapply for regular certification until twelve (12) months after the extended temporary certification ends; and**
- (2) the applicant may choose to apply for outpatient certification, if the applicant meets the criteria for outpatient certification.**

(Division of Mental Health and Addiction; 440 IAC 4.4-2-3.5; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2401)

SECTION 6. 440 IAC 4.4-2-4 IS AMENDED TO READ AS FOLLOWS:

Proposed Rules

440 IAC 4.4-2-4 Outpatient certification

Authority: IC 12-8-8-4; IC 12-23-1-6

Affected: IC 25-22.5-2; IC 25-23-1; IC 25-23.6; IC 25-33

Sec. 4. (a) If an entity has ten (10) or fewer, full-time or part-time, direct service providers, and meets the other criteria in this article, the entity may receive an outpatient certification from the division.

(b) The entity must provide a list of all direct service providers, including name, educational level, any degrees obtained, proof of current individual licensure certification, or endorsement from a division approved credentialing body.

(c) At least fifty percent (50%) of the direct service providers must be licensed or ~~certified~~ **credentialed** as follows:

(1) A ~~certified licensed~~ clinical social worker, a **licensed mental health counselor**, or a ~~certified licensed~~ marriage and family therapist. ~~from the social work certification and marriage and family therapists credentialing board (IC 25-23.6).~~

(2) A psychologist (IC 25-33).

(3) A physician (IC 25-22.5-2).

(4) An advanced practice nurse or certified nursing specialist (IC 25-23-1). ~~or~~

(5) An individual credentialed in addictions counseling by a credentialing body approved by the division.

(d) In addition, at least one (1) of the direct service providers must be specifically credentialed in addictions counseling by a credentialing body approved by the division.

(e) Applicants for outpatient certification must meet all requirements at the time of application in order to be certified.

(f) The division may require the applicant to resolve any problems identified by the division or the credentialing bodies.

(g) The division may issue an outpatient certification as an addiction **treatment** services provider to the applicant, after the division has determined that the applicant meets all of the criteria for outpatient certification set forth in this article.

(h) The outpatient certification shall expire two (2) years from the date it is issued.

(i) ~~Programs which are certified by the divisions as addition services providers on November 1, 1996, must meet the requirements set forth in this section by July 1, 1998: (Division of Mental Health and Addiction; 440 IAC 4.4-2-4; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2402; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)~~

SECTION 7. 440 IAC 4.4-2-4.5 IS ADDED TO READ AS FOLLOWS:

440 IAC 4.4-2-4.5 Uniform criteria for programs that are certified as outpatient under section 4 of this rule

Authority: IC 12-8-8-4; IC 12-23-1-6

Affected: IC 12-23-4-5

Sec. 4.5. (a) Each outpatient certified program shall provide at least outpatient treatment services and may provide intensive outpatient treatment services to those individuals whose assessments indicate a need for these services.

(b) If an outpatient certified program has or holds itself out as having intensive outpatient treatment services, it shall meet the requirements at 440 IAC 4.4-1-1(12).

(c) Each program shall have specific minimum admission criteria, including the following:

(1) The consumer has a documented history of current excessive use of alcohol or other drugs.

(2) The individual is experiencing significant functional impairments in one (1) or more of the following areas:

(A) Activities of daily living.

(B) Interpersonal functioning.

(C) Psychological functioning.

(D) Ability to live without recurrent abuse of chemicals.

(3) The program shall consider whether the consumer has adequate support systems to foster recovery.

(4) There are no presenting medical or unstable psychiatric conditions that would preclude the consumer's participation in this level of treatment.

(5) A more intensive level of treatment is not indicated from the intake and assessment.

(d) The program shall have a written policy and procedure for conducting consumer intake assessments meeting the following criteria:

(1) The consumer intake assessment shall take place within two (2) weeks of the consumer's first contact with the agency.

(2) The intake assessment shall include, but not be limited to, the following items of information:

(A) A psycho-social history.

(B) Emotional and behavioral functioning.

(C) Alcohol and other drug use history.

(D) Medical conditions.

(3) The individual shall be screened for co-occurring disorders.

(e) The program shall refer the individual to appropriate treatment, or link with another program with special expertise if:

(1) there are medical or unstable psychiatric conditions that would preclude the consumer's participation in this level of treatment; or

(2) a more intensive level of treatment is indicated from the assessment.

(f) The program shall have written policies and procedures for the development of a treatment plan, which includes, at a minimum, the following:

- (1) Each consumer shall have an individualized treatment plan.
- (2) Each consumer shall have the opportunity to participate in developing the treatment plan.
- (3) The comprehensive treatment plan shall be completed by the third session.
- (4) Each treatment plan shall be reviewed as appropriate with the consumer, but at least every sixty (60) calendar days, and revised as necessary.
- (5) The review of the treatment plan shall address the attainment of treatment goals.

(g) Each individual treatment plan shall include, at a minimum, the following:

- (1) Consumer problems to be addressed.
- (2) Specific goals written in terms of measurable criteria for proposed outcomes of each identified problem.
- (3) Therapeutic activities and their frequency.
- (4) Referrals for needed services that are not provided by the program.
- (5) Staff persons responsible for working with each identified goal.
- (6) Plans for involvement in appropriate support groups.
- (7) The consumer's signature indicating that he or she has reviewed and understands the contents of the service plan and any revisions thereafter.

(h) The program shall have a policy and procedure for recording consumer progress that addresses, at a minimum, the following:

- (1) A consumer record shall be completed for each therapeutic activity and its relationship to the service plan.
- (2) The date and identity of the person making the entry.
- (3) Entries shall be made after each consumer contact.

(i) The program shall have written policies and procedures for discharge planning that shall include, but not be limited to, the following criteria:

- (1) The discharge plan shall be reviewed by the consumer.
- (2) The discharge summary shall include, at a minimum, indicators of the following:
 - (A) The consumer's progress in achieving outcomes for each goal of the treatment plan.
 - (B) A final evaluation.
 - (C) Recommendations for care after discharge.
- (3) The discharge summary shall be completed within thirty (30) calendar days following discharge.

(Division of Mental Health and Addiction; 440 IAC 4.4-2-4.5; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2402)

SECTION 8. 440 IAC 4.4-2-5 IS AMENDED TO READ AS FOLLOWS:

440 IAC 4.4-2-5 Maintenance of certification

Authority: IC 12-8-8-4; IC 12-23-1-6

Affected: IC 12-23-1-6

Sec. 5. Maintenance of certification is dependent upon the following:

- (1) For regular certification, the entity shall maintain accreditation from an approved accrediting agency.
- (2) For temporary certification, the entity shall do the following:

(A) Fulfill the requirements regarding direct service provider credentials.

(B) If, for more than thirty (30) days, there is no direct service provider who has a specific addictions counseling credential the entity must immediately notify the division with a plan of correction.

(C) The division may continue the certification for another sixty (60) days while the entity comes into compliance with the requirements.

(2) (3) For outpatient certification, the entity shall do the following:

(A) Fulfill the requirements regarding direct service provider credentials.

(B) Maintain a file containing documentation of current licensure or certification for each direct service provider.

(C) If, for more than ~~ninety (90)~~ thirty (30) days:

(i) the number of licensed or certified direct service providers drops below fifty percent (50%) of the direct service providers; or

(ii) there is no direct service provider who has a specific addictions counseling credential;

the entity must immediately notify the division with a plan of correction.

(D) The division may continue the certification for another ~~ninety (90)~~ sixty (60) days while the entity comes into compliance with the requirements.

(3) (4) If the number of direct service providers in an entity with outpatient certification increases to eleven (11) or more, the entity must immediately notify the division and begin the process for regular certification as set forth in this article.

(4) (5) For either regular certification or outpatient certification, the entity shall do the following:

(A) Have written policies and enforce these policies to support and protect the fundamental human, civil, constitutional, and statutory rights of each ~~client~~ consumer. The entity shall give a written statement of rights to each ~~client~~ consumer and, in addition, the entity shall document that staff provides an oral explanation of these rights to each ~~client~~ consumer.

(B) Maintain compliance with required health, fire, and safety codes as prescribed by federal and state law.

(Division of Mental Health and Addiction; 440 IAC 4.4-2-5; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2402; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)

Proposed Rules

SECTION 9. 440 IAC 4.4-2-6 IS AMENDED TO READ AS FOLLOWS:

440 IAC 4.4-2-6 Notification of changes

Authority: IC 12-8-8-4; IC 12-23-1-6

Affected: IC 12-27

Sec. 6. (a) An entity which is certified under this article must notify the division, in writing, of any of the following:

- (1) Change in location of any of the addiction treatment services operational sites, including additions, deletions, and expansion.
- (2) Changes in the addiction **treatment** services provided or changes in the populations served.
- (3) Change in ownership.
- (4) The violation of health, fire, or safety codes as prescribed by federal and state laws.
- (5) Documented violation of a ~~client's~~ **consumer's** rights under IC 12-27 and under 42 CFR ~~Part~~ 2.

(b) If an entity has outpatient certification, the entity must notify the division of changes in the number of direct service providers when any of the following occurs:

- (1) The direct service providers number eleven (11) or more.
- (2) For more than ~~ninety (90)~~ **thirty (30)** days, the number of licensed ~~certified~~, or credentialed direct service providers drops below fifty percent (50%).
- (3) For more than ~~ninety (90)~~ **thirty (30)** days, there is no direct service provider who is specifically credentialed in addictions counseling.

(c) If an entity has a temporary certification, the entity must notify the division if, for more than thirty (30) days, there is no direct service provider who is specifically credentialed in addictions counseling.

~~(e)~~ **(d)** If an entity has a regular certification, the entity must notify the division of the following:

- (1) Change in the accrediting agency to provide accreditation.
- (2) Change in the accreditation status of the entity.

(Division of Mental Health and Addiction; 440 IAC 4.4-2-6; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2402; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)

SECTION 10. 440 IAC 4.4-2-7 IS AMENDED TO READ AS FOLLOWS:

440 IAC 4.4-2-7 Renewal of certification

Authority: IC 12-8-8-4; IC 12-23-1-6

Affected: IC 12-23-1-6

Sec. 7. (a) To renew certification under this article, the provider shall submit a request for certification **thirty (30) days prior to the expiration of the application** on a form prepared by the division, which shall ~~include~~ **consist of all materials requested by the division, including** the following:

- (1) For regular certification, proof of accreditation, including

the most recent site survey recommendations and the entity's response to these recommendations.

(2) For outpatient certification, **the following:**

(A) Proof of current licensure or certification credential of individual direct service providers.

(B) Proof of compliance with the uniform criteria for outpatient programs, set forth at section 4.5 of this rule.

(b) The division may require the applicant to resolve any problems identified by the division, a credentialing body, or the accrediting agency before the division issues a renewal certificate.

(c) When a request for the renewal of certification is deemed to be complete by the division and the applicant has taken any action which is deemed necessary by the division, the division shall issue a new certificate.

(d) If the entity has a regular certification, this certification shall expire ninety (90) days after the expiration of the entity's accreditation from the accrediting agency.

(e) If the entity has an outpatient certification, this certification shall expire two (2) years from the date it is issued. *(Division of Mental Health and Addiction; 440 IAC 4.4-2-7; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2403; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235)*

SECTION 11. 440 IAC 4.4-2-8 IS AMENDED TO READ AS FOLLOWS:

440 IAC 4.4-2-8 Conditional status for regular and outpatient certification

Authority: IC 12-8-8-4; IC 12-23-1-6

Affected: IC 12-23-1-6

Sec. 8. (a) The division shall issue a conditional ~~certification~~ **status** under this article upon the division's investigation and determination of any of the following conditions:

(1) A substantive change in the entity's accreditation status other than revocation of the accreditation.

(2) Failure of the entity to renew accreditation within ninety (90) days following expiration of the entity's current accreditation by the entity's accrediting agency.

(3) Failure to comply with this article.

(4) **Any** conduct or **any** practice in the operations of the entity that is found by the division to be detrimental to the welfare of persons served by the organization.

(5) The physical safety of the ~~clients~~ **consumers** or staff of the entity is compromised by a physical or sanitary condition of a physical facility of the entity.

(6) Violation of a federal or state statute, rule, or regulation in the course of the operation of the entity.

(b) The time period of a conditional ~~certification~~ **status** is determined by the division, but may not exceed ~~eighteen (18)~~ **twelve (12) months from the date the conditional status was effective.**

- (c) The division shall notify the entity of the following:
- (1) The requirements not met and the **actions intermediate steps required by the division that** the entity must take to meet those requirements.
 - (2) The time period granted by the division for the entity to meet the requirements.

(d) ~~The division shall reinstate regular certification if the entity meets the requirements:~~

(e) (d) The division shall terminate the entity's certification if the entity fails to meet the requirements within the allotted time period. (*Division of Mental Health and Addiction; 440 IAC 4.4-2-8; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2403; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235*)

SECTION 12. 440 IAC 4.4-2-9 IS AMENDED TO READ AS FOLLOWS:

440 IAC 4.4-2-9 Termination of certification

Authority: IC 12-8-8-4; IC 12-23-1-6

Affected: IC 12-23-1-6

Sec. 9. (a) The division shall terminate the certification of the entity if the following occurs:

- (1) The entity's accreditation is revoked.
- (2) The entity that has a conditional ~~certification~~ **status** does not meet the requirements of the division within the period of time required.
- (3) The entity fails to provide proof of application for accreditation prior to the expiration of the initial temporary certification.
- (4) The entity fails to become accredited within twenty-four (24) months of receiving a temporary certification.

(b) The division shall notify the Indiana family and social services administration and the department of administration that the entity's certification has been terminated.

(c) An entity whose regular certification is terminated may not reapply for regular certification as an addiction services treatment provider until the lapse of one (1) year from the date of termination.

(d) An entity whose outpatient certification is terminated may not reapply for regular certification as an addiction services treatment provider until the lapse of one (1) year from the date of termination. (*Division of Mental Health and Addiction; 440 IAC 4.4-2-9; filed Apr 17, 1997, 10:00 a.m.: 20 IR 2403; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235*)

SECTION 13. 440 IAC 4.4-2-11 IS ADDED TO READ AS FOLLOWS:

440 IAC 4.4-2-11 Appeals

Authority: IC 12-8-8-4; IC 12-23-1-6

Affected: IC 4-21.5-3; IC 12-23-1-6

Sec. 11. A party who is aggrieved by any adverse action taken under this rule may appeal under IC 4-21.5-3. (*Division of Mental Health and Addiction; 440 IAC 4.4-2-11*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 25, 2001 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 6, Indianapolis, Indiana the Division of Mental Health and Addiction will hold a public hearing on proposed amendments concerning the certification of addiction treatment services providers to add uniform criteria for addiction treatment services programs, to define intensive outpatient services, to require entities requesting temporary regular certification to meet specific criteria, and to make technical revisions regarding time frames. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet Corson
Director
Division of Mental Health and Addiction

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

Proposed Rule
LSA Document #01-204

DIGEST

Amends 460 IAC 3.5-2-1 to update the unit of service reimbursement rates for adult day services paid by the division of disability, aging, and rehabilitative services to approved providers. Adult day services are provided to eligible individuals with a developmental disability. Effective 30 days after filing with the secretary of state.

460 IAC 3.5-2-1

SECTION 1. 460 IAC 3.5-2-1 IS AMENDED TO READ AS FOLLOWS:

460 IAC 3.5-2-1 Unit of service reimbursement rates

Authority: IC 12-8-8-4

Affected: IC 12-7-2-39; IC 12-7-2-61; IC 12-9-2-6

Sec. 1. (a) The units of adult day services specified in this section shall be reimbursed by the division at the following corresponding rates:

Proposed Rules

Adult Day Service	Unit of Service	Unit Rate
Supported employment follow-along	1 hour	\$36.95
Community-based sheltered work	1 hour	\$5.43 \$5.92
Sheltered work	1 hour	\$2.75
Group habilitation	1 hour	\$5.11 \$5.57
Individual habilitation	1 hour	\$27.58 \$30.06
Group occupational therapy	15 minutes	\$5.04
Individual occupational therapy	15 minutes	\$20.13
Group physical therapy	15 minutes	\$5.87
Individual physical therapy	15 minutes	\$23.49
Group speech therapy	15 minutes	\$4.24
Individual speech therapy	15 minutes	\$16.97
Transportation	1 round trip	\$8.91

(b) For the following rates, at least eighty percent (80%) of the unit rate increase from the previously published unit rate must be paid by the provider to the hourly wages of direct care staff:

Adult Day Service	Unit of Service	Previous Unit Rate	New Unit Rate
Community-based sheltered work	1 hour	\$5.43	\$5.92
Group habilitation	1 hour	\$5.11	\$5.57
Individual habilitation	1 hour	\$27.58	\$30.06

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 3.5-2-1; filed Mar 18, 1996, 11:00 a.m.: 19 IR 2041)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 29, 2001 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 1, Indianapolis, Indiana the Division of Disability, Aging, and Rehabilitative Services will hold a public hearing on proposed amendments concerning unit of service reimbursement rates. The proposed rule updates the unit of service reimbursement rates for adult day services paid by the division of disability, aging, and rehabilitative services to approved providers. Adult day services are provided to eligible individuals with a developmental disability.

If an accommodation is required to allow an individual with a disability to participate in a public hearing, please contact Jean Oswald at (317) 232-1161 at least 48 hours before the hearing.

Written comments may be directed to the division of disability, aging, and rehabilitative services, Attention: Jean Oswald, 402 West Washington Street, Room W451, Indianapolis, Indiana 46204.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451

and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Venita Moore
Acting Director
Division of Disability, Aging, and Rehabilitative Services

TITLE 480 VIOLENT CRIME COMPENSATION DIVISION

Proposed Rule
LSA Document #01-194

DIGEST

Amends 480 IAC 1 concerning violent crime compensation. Effective 30 days after filing with the secretary of state.

- | | |
|----------------------------|---------------------------|
| 480 IAC 1-1-1 | 480 IAC 1-1-8 |
| 480 IAC 1-1-2 | 480 IAC 1-1-9 |
| 480 IAC 1-1-3 | 480 IAC 1-1-10 |
| 480 IAC 1-1-4.1 | 480 IAC 1-2-1 |
| 480 IAC 1-1-5 | 480 IAC 1-2-2 |
| 480 IAC 1-1-6 | 480 IAC 1-2-3 |
| 480 IAC 1-1-7 | |

SECTION 1. 480 IAC 1-1-1 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-1-1 Definitions

Authority: IC 5-2-6.1-46
Affected: IC 4-21.5; IC 5-2-6.1

Sec. 1. ~~Definitions~~. The definitions set forth in ~~IC 16-7-3-6-1~~ **IC 5-2-6.1** are hereby adopted by the division and incorporated by reference in ~~these rules~~: **this article**. (*Violent Crime Compensation Division; 480 IAC 1-1-1; filed Dec 17, 1981, 3:45 p.m.: 5 IR 382*)

SECTION 2. 480 IAC 1-1-2 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-1-2 Authority; purpose

Authority: IC 5-2-6.1-46
Affected: IC 4-21.5; IC 5-2-6.1

Sec. 2. ~~Authority and purpose~~: These rules and regulations are promulgated. **This title is promulgated** pursuant to provisions contained in ~~IC 16-7-3-6-1 et seq~~: **IC 5-2-6.1-46** and in accordance with ~~IC 4-22-1-1 et seq~~: **IC 4-21.5**. The purpose of ~~these rules and regulations~~ **this article** is to facilitate implementation and compliance with ~~IC 16-7-3-6-1 et seq~~: **IC 5-2-6.1** by establishing procedures for the investigation, review, determination, and appeal of claims for victim assistance filed with the violent ~~crimes~~ **crime** compensation division, ~~industrial board of~~

~~Indiana: criminal justice institute.~~ (*Violent Crime Compensation Division; 480 IAC 1-1-2; filed Dec 17, 1981, 3:45 p.m.: 5 IR 382*)

SECTION 3. 480 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-1-3 Filing claims

Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 3. (a) **Requirements for time and place of filing are as follows:**

- (1) All claims must be filed within one hundred eighty (180) days of the date the crime was committed; provided, however, that for good cause the director may extend the time for filing for a period not exceeding two (2) years after such occurrence.
- (2) All claims shall be filed in person or by certified mail on forms provided by the division in its office located at ~~601 State Office Building~~, **One North Capitol Avenue, Suite 1000**, Indianapolis, Indiana 46204, or at such other location as may be designated by the division.
- (3) The claim shall be signed by the claimant. If the claim is filed by a minor or other incompetent, the claim may be signed and filed on his or her behalf by the parent, guardian, or other individual authorized to administer his or her affairs.

(b) **Requirements for contents of claim shall be as follows:**

- (1) The claim shall contain, as a minimum, the following information:
 - (A) The claimant's name, address, and other identifying information.
 - (B) The victim's name, address, and other identifying information if different than the claimant.
 - (C) A narrative statement describing the crime giving rise to the claim, including the name of alleged perpetrator, the time and place thereof, and the law enforcement agency to which the crime was reported.
 - (D) A brief description of the nature of injuries received, or when applicable, the cause of death of the victim.
 - (E) A brief statement of the losses and/or expenses incurred as a result of the crime.
 - (F) A release of medical information. ~~and~~
 - (G) A signed subrogation agreement.

(2) Each claim shall be reviewed to ~~insure~~ **ensure** that it is complete. If the claim is not complete, written notice shall be given to the claimant with a brief statement requesting additional information. The claimant within thirty (30) days of receipt of the request for additional information, shall supply that information to the division or request an extension of time, not to exceed sixty (60) days. The request shall be in writing to the director. If the claimant does not furnish additional information, or an extension granted by the director for good cause, the application shall be denied.

(*Violent Crime Compensation Division; 480 IAC 1-1-3; filed*

Dec 17, 1981, 3:45 p.m.: 5 IR 382; filed Nov 15, 1984, 10:23 a.m.: 8 IR 335, eff Nov 1, 1984 [IC 4-22-2-5 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #84-66 was filed Nov 15, 1984.])

SECTION 4. 480 IAC 1-1-4.1 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-1-4.1 Determination of eligibility

Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 4.1. After a claim has been determined to contain sufficient identifying information, a claims counselor or other person designated by the director, shall compare it to the eligibility standards described in ~~IC 16-7-3-6-5, 16-7-3-6-7 and 16-7-3-6-8.~~ **IC 5-2-6.1-13 through IC 5-2-6.1-15.** The claims counselor shall obtain supporting documentation necessary for the processing of a claim, including, but not limited, to a police report, including, where applicable, all supplemental reports and victim and witness statements made to law enforcement personnel, copies of charging informations and other prosecutorial data, copies of medical, funeral, and psychiatric bills, documentation regarding substitute childcare expenses, employment or earnings information, documentation concerning medical and/or life insurance benefits, Social Security, pension, or retirement benefit information, documentation regarding ~~workmen's~~ **worker's** compensation or unemployment compensation benefits, and any other documentation necessary to determine eligibility. (*Violent Crime Compensation Division; 480 IAC 1-1-4.1; filed Nov 6, 1986, 3:38 p.m.: 10 IR 425*)

SECTION 5. 480 IAC 1-1-5 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-1-5 Investigation of claims; notice of determinations

Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 5. (a) A claim, when accepted as complete or when set for hearing, will be investigated by the division as to its validity, regardless of whether the alleged perpetrator has been apprehended, prosecuted for or convicted of any crime based upon the same alleged incident.

(b) All claimants under the law creating this division shall cooperate with claims counselors and other representatives of this division in order to be eligible for an award. In the event that such cooperation is refused or denied, the division may, in the discretion of the director, deny such claims.

(c) The division shall obtain written verification of all events, claims, and sums of money alleged by the claimant to the greatest degree possible through police agencies, providers of medical assistance and funeral services, employers, witnesses,

Proposed Rules

and others. If discrepancies arise the division may interview the claimant, or victim if other than the claimant, in order to establish such verifications and consistency of the record of such claim.

(d) After receipt of all information necessary to process a claim the claims counselor shall prepare a written case report and preliminary determination recommendation on the claim. The case report shall be delivered to the director (or his designee) and shall contain a statement of the facts alleged by the claimant, describe the verifications and discrepancies, make a recommendation as to whether or not assistance should be provided, the amounts payable (including reasonable attorney fees, if any,) and a rationale of the recommendation. The director shall then review the entire file together with the case report and preliminary determination recommendation. If the director disagrees with the claims counselor's preliminary determination recommendation in whole or in part, the director shall remand the claim for further investigation or request that the matter be set for hearing.

(e) If the director agrees with the claims counselor's recommendation to deny the claim, the director shall issue to the claimant a preliminary determination stating the reason or reasons for the denial. The preliminary determination shall be sent by ~~1st~~ **first** class U.S. mail to the claimant's last known address. A claimant who disagrees with the preliminary determination may request a hearing. This request must be made in writing within thirty (30) days from the date of the preliminary determination. The claimant's failure to timely request a hearing shall constitute a waiver of hearing and a consent to the agency action described in the preliminary determination and a notice of final determination will then be issued to the claimant. Where timely requested a hearing will be set and will be limited to the reason or reasons for the denial stated in the preliminary determination. In the event the claimant disagrees with the ~~the~~ findings and determination of the hearing officer following a hearing, the claimant may request a review by the ~~full industrial board~~ **criminal justice institute**. Such request must be made in writing and filed with the division within twenty-one (21) days from the date of receipt of the findings and determination of the hearing officer.

(f) If the director agrees with the claims counselor's recommendation to award the claim, the director shall issue a notice of award stating the amount of the award and its allocation. If a claimant disagrees with the notice of award, the claimant may request a hearing. This request must be made in writing within thirty (30) days from the date of the notice of award. (*Violent Crime Compensation Division; 480 IAC 1-1-5; filed Dec 17, 1981, 3:45 p.m.: 5 IR 383; filed Nov 15, 1984, 10:23 a.m.: 8 IR 335, eff Nov 1, 1984 [IC 4-22-2-5 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #84-66 was filed Nov 15, 1984.]; filed Nov 6, 1986, 3:38 p.m.: 10 IR 425*)

SECTION 6. 480 IAC 1-1-6 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-1-6 Hearings

Authority: IC 5-2-6.1-46

Affected: IC 4-21.5

Sec. 6. (a) ~~Notification of Hearing~~. When a hearing is ordered, the claimant, counsel, and all parties whose testimony is deemed necessary by the division shall be notified in writing of the time, place, and scope of the hearing in accordance with ~~IC 4-22-1-6~~ **IC 4-21.5**. Any subsequent notices of hearing due to a request for continuation by the claimant or claimant's attorney shall be sent by ~~1st~~ **first** class U.S. mail.

(b) Requirements for conduct of hearings are as follows:

(1) All hearings shall be conducted in an orderly manner and consistent with the provisions of ~~630 IAC~~, rules of the ~~industrial board of Indiana~~, **criminal justice institute**, to the extent applicable. All witnesses shall testify under oath or by affirmation and all testimony shall be recorded. The hearing officer shall not be bound by common law or statutory rules of evidence, or by judicial rules of procedure.

(2) The claimant has the burden of proving his right to compensation by a preponderance of the evidence.

(3) The hearing officer may receive as evidence any statement, document, information, or matter that is deemed relevant and of such a nature as to afford the parties a fair hearing. The hearing officer may also accept hospital and physician's records and reports as proof of the injury sustained without requiring the presence of the attending physician at the hearing.

(4) The hearing officer may direct medical examination of the claimant by a physician designated by the hearing officer, having due regard for the convenience of the claimant.

(5) The claimant shall be present at the hearing and will be allowed to present testimony and cross-examine witnesses in person or by counsel.

(6) Hearings may be adjourned on the motion of the hearing officer or upon timely request of any interested party. The failure of the claimant to appear at the time of the hearing may result in denial of the claim; provided, however, in the discretion of the hearing officer upon good cause shown, such failure to appear, may be excused, and a new hearing scheduled.

(7) Hearings shall be open to the public except that the hearing officer may exercise discretion to hold the hearing in private in the interest of the victim or society where justice requires.

(8) Upon the application of the claimant or by counsel, submitted in affidavit form, or upon application of the hearing officer, a case may be opened for further investigation. If the hearing officer finds it necessary, further testimony may be taken at any time prior to the final determination of the hearing. The division may, on its own motion, reinvestigate or reopen cases at any time, as it deems necessary.

(9) All hearings of the division shall be held at its offices in Indianapolis, Indiana. A claimant may request a hearing be held in another location upon written request to the director setting forth the reasons for such change of location. If, in the opinion of the director, the claimant would suffer undue hardship unless the location of the hearing is ~~changes;~~ **changed**, the director shall instruct the hearing officer to set the hearing location for the convenience of the claimant. All requests for change of location must be made no less than twenty (20) days prior to the date of the hearing.

(Violent Crime Compensation Division; 480 IAC 1-1-6; filed Dec 17, 1981, 3:45 p.m.: 5 IR 384; filed Nov 15, 1984, 10:23 a.m.: 8 IR 336, eff Nov 1, 1984 [IC 4-22-2-5 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #84-66 was filed Nov 15, 1984.]; filed Nov 6, 1986, 3:38 p.m.: 10 IR 426)

SECTION 7. 480 IAC 1-1-7 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-1-7 Attorneys; representation

Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1-37

Sec. 7. (a) **Requirements for representation by attorneys are as follows:**

(1) Claimants have the right to be represented before the violent crime compensation division or any representatives thereof at all stages of the proceeding by an attorney-at-law duly licensed to practice in ~~the state of~~ Indiana.

(2) The attorney shall file a Notice of Appearance, prior to or at his first appearance. Such notice shall contain the name of the party represented **and** the attorney's name, address, and telephone number.

(3) If any party designates an attorney-at-law and such attorney has executed and filed with the division a Notice of Appearance in the matter, such notice shall remain in effect until:

- (A) the party represented files with the division a written revocation of the attorney's authority; ~~or~~
- (B) the attorney files with the division a written statement of his withdrawal from the case; ~~or~~
- (C) the attorney states on the record at a division hearing that he is withdrawing from the case; or
- (D) the division receives notice of the attorney's death or disqualification.

(4) After filing of a Notice of Appearance in accordance with ~~480 IAC 1-1-7~~, **this rule**, and so long as it may remain in effect, copies of all written communications or notices to the claimant shall be sent to such attorney in lieu of the party so represented. Service upon the attorney shall be deemed service on the party so represented.

(b) ~~Attorneys' Fees.~~ (1) Attorneys' fees shall be approved by the division, and shall be commensurate with services rendered to the claimant subject to the limitations of ~~IC 16-7-3-6-14~~ **IC**

5-2-6.1-37. *(Violent Crime Compensation Division; 480 IAC 1-1-7; filed Dec 17, 1981, 3:45 p.m.: 5 IR 384; filed Nov 15, 1984, 10:23 a.m.: 8 IR 337, eff Nov 1, 1984 [IC 4-22-2-5 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #84-66 was filed Nov 15, 1984.]*

SECTION 8. 480 IAC 1-1-8 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-1-8 Subpoenas, subpoenas duces tecum, depositions

Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 8. (a) **Requirements for issuance of subpoenas and subpoenas duces tecum are as follows:**

(1) The division shall issue subpoenas and subpoenas duces tecum, either at its own instance or upon written application of any party made not less than ten (10) days prior to the hearing. The ten (10) day provision may be waived at the discretion of the director. Subpoenas and subpoenas duces tecum shall comply with the Indiana rules of procedure.

(2) The issuance of a subpoena at the application of a party shall depend upon a showing of necessity. A written request shall designate the names and addresses of witnesses and the locations of documents, books, payrolls, personal records, correspondence, papers, and any other evidence necessary to the claim being heard.

(3) The cost of service, witness and mileage fees shall be borne by the party at whose request a subpoena is issued.

(b) ~~Depositions.~~ The division, on its own motion or on application of the claimant, shall take or cause to be taken affidavits or depositions of witnesses residing within or without the state, whenever it deems such procedure necessary. The division may set appropriate terms and conditions pertaining to the taking of affidavits or depositions. The requesting party shall bear the expense. *(Violent Crime Compensation Division; 480 IAC 1-1-8; filed Dec 17, 1981, 3:45 p.m.: 5 IR 385; filed Nov 15, 1984, 10:23 a.m.: 8 IR 337, eff Nov 1, 1984 [IC 4-22-2-5 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #84-66 was filed Nov 15, 1984.]*

SECTION 9. 480 IAC 1-1-9 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-1-9 Awards

Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 9. (a) No award will be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars (\$100).

(b) No award may be made unless the division finds that:

Proposed Rules

- (1) a violent crime was committed;
- (2) the victim need not be a resident of ~~the state of~~ Indiana at the time of occurrence of the crime upon which the claim is based; however, such crime must have occurred within ~~the state of~~ Indiana;
- (3) such crime directly resulted in personal physical injury or death of the victim; and
- (4) such crime was reported to a law enforcement officer within forty-eight (48) hours after the occurrence of such crime, and the claimant has cooperated fully with law enforcement personnel to solve such crime, unless the hearing officer, for good cause shown, finds such failure to report or cooperate with law enforcement officials to have been justified.

(c) An award made under this rule shall be in an amount not to exceed out-of-pocket expenses, together with loss of actual earnings consistent with this rule and other actual expenses resulting from the bodily injury or death of the victim.

(d) An award made under this rule shall be in an amount not to exceed out-of-pocket medical expenses, together with loss of actual earning consistent with this rule, reasonable child care expenses not to exceed one thousand dollars (\$1,000), loss of financial support consistent with this rule, and other actual expenses resulting from the bodily injury or death of the victim. In no case shall the total amount of an award exceed ~~ten fifteen~~ thousand dollars ~~(\$10,000)~~ **(\$15,000)** per victim.

(e) In instances of claims based on physical injuries or death, the division shall exercise its discretion in determining whether payments are to be made in a lump sum or periodically.

(f) When disbursing an award, the division shall apply the proceeds of the award in the following order:

- (1) Reasonable attorney fees as determined by the division.
- (2) Outstanding medical and funeral expenses.
- (3) Reimbursement of compensable out-of-pocket expenses.
- (4) Loss of income the victim would have earned had the victim not been injured.
- (5) Loss of financial support that the victim would have supplied to legal dependents had the victim not died or been injured.

In the event that the expenses in subdivision (2) exceed the total amount of the award, the division shall prorate the award among the providers in that category.

(g) If there are two (2) or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the hearing officer shall apportion the award among the ~~claimant~~ **claimants** in the proportion the deceased victim contributed to their support. In the event of a change of dependency of the claimant or any one (1) of them, either by marriage or otherwise, the division may change the proportion and the amount of the payments to the claimant.

(h) If the recipient of an award is a minor, the director may require that a guardianship be established and the award be delivered to the guardian of the minor's estate.

(i) In determining whether to award loss of income to a victim who has died or been injured, the following factors may be considered by the division:

- (1) Whether the victim was employed at the time of injury or death.
- (2) The victim's employment history, education, and job skills.
- (3) The victim's age, life expectancy, and past earnings.
- (4) Other relevant factors.

(j) The part of each award covering unpaid expenses of a claimant may be made payable directly to each creditor subject to the claimant's consent.

(k) An emergency award of not more ~~that than~~ five hundred dollars (\$500) may be made by the director or his designee prior to the determination of final award if it is determined by the director that a severe financial hardship exists.

(l) No request for an emergency award shall be considered unless a claim has been filed with the division. The claim and the request for the emergency award may be filed simultaneously.

(m) A request for an emergency award may be made either by mail or in person upon an affidavit setting forth in detail the grounds.

(n) The amount of an emergency award shall be deducted from the final award made by the division, and if no final award is made or the amount of the emergency award exceeds the amount of the final award, such amount shall be recoverable from the claimant.

(o) Compensation by the division for funeral, burial, or cremation expenses shall not exceed three thousand dollars (\$3,000) per victim per claim.

(p) Compensation by the division for outpatient psychological and/or psychiatric counseling shall not exceed the following:

- (1) One thousand dollars (\$1,000) for mental health facilities or counselors who do not use a sliding fee schedule based on the victim's income.
- (2) One thousand five hundred dollars (\$1,500) for mental health facilities or counselors who use a sliding fee schedule based on the victim's income. Prior to qualifying under this subdivision, the sliding fee schedule must be submitted to the division for approval.

(Violent Crime Compensation Division; 480 IAC 1-1-9; filed Dec 17, 1981, 3:45 p.m.: 5 IR 385; filed Nov 15, 1984, 10:23 a.m.: 8 IR 338, eff Nov 1, 1984 [IC 4-22-2-5 suspends the effectiveness of a rule document for thirty (30) days after filing

with the secretary of state. LSA Document #84-66 was filed Nov 15, 1984.]; filed Jul 12, 1991, 5:00 p.m.: 14 IR 2232)

SECTION 10. 480 IAC 1-1-10 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-1-10 Appeals; board review

Authority: IC 5-2-6.1-46
Affected: IC 4-21.5; IC 22-3-4-8

Sec. 10. (a) The state or claimant may appeal the findings of the hearing officer within twenty-one (21) days after the date of receipt of the determination by filing a written appeal with the director, who shall review the written determination of the hearing officer and place it on the docket for review by the ~~full industrial board of Indiana~~ **criminal justice institute**.

(b) A decision by the ~~full industrial board of Indiana~~ **criminal justice institute** shall be conclusive and binding unless the state or the claimant, within thirty (30) days from the date of the ~~full board criminal justice institute~~ award appeals to the court of appeals pursuant to IC 22-3-4-8. (*Violent Crime Compensation Division; 480 IAC 1-1-10; filed Dec 17, 1981, 3:45 p.m.: 5 IR 386; filed Nov 15, 1984, 10:23 a.m.: 8 IR 339, eff Nov 1, 1984 [IC 4-22-2-5 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #84-66 was filed Nov 15, 1984.]; filed Nov 6, 1986, 3:38 p.m.: 10 IR 427)*)

SECTION 11. 480 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-2-1 Eligibility and cooperation

Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1; IC 34-26-2

Sec. 1. (a) Beginning September 1, 1985, a person who seeks hospital emergency room treatment for injuries and trauma resulting from an alleged sexual assault shall be considered an alleged sex crime victim eligible to have the costs of their emergency room treatment paid by the sex crime victim services fund (fund) to the servicing hospital if **the following occur:**

- (1) Within forty-eight (48) hours following the alleged crime:
 - (A) a police report regarding the incident has been filed; or
 - (B) the hospital, victim, or a responsible party has contacted an appropriate law enforcement agency.
- (2) A representative of a law enforcement agency must, in writing, confirm that the victim has cooperated in the initial law enforcement investigation and report.
- (3) The fund will pay hospitals for services rendered in connection with alleged sex crimes occurring between spouses only if a petition for dissolution of marriage or legal separation or a protective order under ~~IC 34-4-5~~ **IC 34-26-2** has been filed and the spouses are living apart.

(b) The victim must consent to the emergency room treatment

and evidence-gathering physical examination and such treatment must be ordered by the attending physician. If the victim is a minor or incompetent, the victim's parent or guardian, an officer of the court or other authorized individual may sign for the victim. The victim or other authorized individual must sign and complete the appropriate sections of the fund's claim form. Eligibility requirements ~~(1) and (2) above~~ **in subsection (a)(1) and (a)(2)** may be suspended if the director of the violent crime compensation division (division) finds a compelling reason to do so. A participating hospital is to treat all alleged sex crime victims and shall render services at no cost to the alleged victim despite any delays in payment from the fund. A hospital shall provide medical services to all alleged sex crime victims without making any legal determinations as to whether the patient has actually been sexually assaulted or whether the hospital will be eligible for payment when the patient has executed the prescribed fund application for payment.

(c) The fund may deny payment to the hospital where the patient fails to meet the eligibility requirements as listed in subsection ~~(1) through (3) above~~. **(a)**. If payment is denied, the hospital will be notified and may then bill the patient or collateral source for services rendered. (*Violent Crime Compensation Division; 480 IAC 1-2-1; filed Nov 6, 1986, 3:38 p.m.: 10 IR 427*)

SECTION 12. 480 IAC 1-2-2 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-2-2 Application for reimbursement; information required

Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 2. (a) To receive payment, the hospital, victim and, if present, a law enforcement agent must supply information regarding the alleged sex crime on a claim form prescribed by the fund completed and filed not later than (90) days from the date of the first emergency room medical services provided. The hospital shall attach to the application ~~the following documents:~~ **the following:**

- ~~(1)~~ **(1)** the patient's emergency department report of the date of treatment, including **the following:**
 - ~~(A)~~ **(1)** Copy of the medical examination report by the attending physician.
 - ~~(B)~~ **(2)** A narrative statement describing the alleged sex crime, including the time and place thereof, and a brief description of the injuries sustained.
 - ~~(C)~~ **(3)** An itemized statement showing all services provided to the alleged sex crime victim which were a direct and **proximate proximate** result of the alleged sex crime.

(b) The fund may also require additional information as needed to determine eligibility. The hospital shall provide to the patient, at the time of victim's release from the hospital, the fund information sheet. Applications for payment for the

Proposed Rules

following subsequent medical procedures shall be filed within **thirty** (30) days of the services rendered:

- (1) Sexually transmitted disease testing.
- (2) Pregnancy testing. ~~and~~
- (3) Mental health counseling for problems directly related to the sexual assault.

If an application is denied or additional information from the hospital is required, the fund shall so notify the hospital in writing. A hospital has (30) days from the date of the fund's notification to present the information required to the fund. The additional information will then be evaluated.

(c) All applications should be mailed or filed in person at the fund's office located at ~~601 State Office Building, 100 North Senate Avenue, One North Capitol Avenue, Suite 1000~~, Indianapolis, Indiana 46204. (*Violent Crime Compensation Division; 480 IAC 1-2-2; filed Nov 6, 1986, 3:38 p.m.: 10 IR 427*)

SECTION 13. 480 IAC 1-2-3 IS AMENDED TO READ AS FOLLOWS:

480 IAC 1-2-3 Covered services

Authority: IC 5-2-6.1-46

Affected: IC 16-7-3.6

Sec. 3. ~~Definitions:~~ (a) As used in this chapter: (a) **rule**, "emergency hospital service" means outpatient services rendered in the emergency room, which are a direct and proximate result of the alleged sex crime, including, but not limited to, at the division's discretion, **the following**:

- (1) Reasonable costs of counseling services for the victim directly relating to the assault, rendered within one (1) year following the initial emergency room treatment. At the division's discretion, other persons deemed necessary for the victim's sex crime crisis counseling may also be eligible for counseling services. Said counseling costs are reimbursable only when services are rendered by or through a hospital participating in the sex crime victim services fund. Included in the itemized statement of counseling services shall be a delineation of the party receiving the service, the date of the subsequent counseling, and the date of the initial ~~emergency~~ **emergency** room treatment.
- (2) Evidence-gathering and diagnostic physical examinations.
- (3) Initial pregnancy and sexually transmitted disease testing related to the alleged sex crime.
- (4) Other itemized laboratory work, including **the following**:
 - (A) Alcohol and drug testing.
 - (B) Syphilis testing up to **ninety** (90) days following the alleged sex crime.
 - (C) Pregnancy and other sexually transmitted disease testing up to **thirty** (30) days following the alleged sex crime.
- (5) Suturing and care of any wounds, including anesthesia and prescribed medications.

- (6) X-rays.
- (7) Other limited out-patient emergency treatment at the discretion of the division.

(b) Noncompensable services include **the following**:

- (1) Inpatient hospital services.
- (2) Nonsexual assault related services.

(c) If a patient is subsequently admitted to the hospital on an in-patient basis following emergency room treatment, the patient may apply to the violent crime compensation division of the ~~industrial board of Indiana~~ **criminal justice institute** and meet separate eligibility requirements to receive benefits for in-patient treatment. (*Violent Crime Compensation Division; 480 IAC 1-2-3; filed Nov 6, 1986, 3:38 p.m.: 10 IR 428*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 26, 2001 at 3:00 p.m., at the Indiana Criminal Justice Institute, One North Capitol Avenue, Suite 1000, Indianapolis, Indiana the Violent Crime Compensation Division will hold a public hearing on proposed amendments concerning violent crime compensation. Copies of these rules are now on file at the Indiana Criminal Justice Institute, One North Capitol, Suite 1000 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Catherine O'Connor
Executive Director
Indiana Criminal Justice Institute

TITLE 828 STATE BOARD OF DENTISTRY

Proposed Rule

LSA Document #01-241

DIGEST

Amends 828 IAC 1-1-2, 828 IAC 1-1-3, 828 IAC 1-1-6, 828 IAC 1-1-8, 828 IAC 1-1-9, 828 IAC 1-1-10, and 828 IAC 1-1-12 concerning the examination for licensure to practice dentistry. Amends 828 IAC 1-1-18 concerning advertising; content. Amends 828 IAC 1-1-21 concerning remedial education. Amends 828 IAC 1-1-23 concerning illegal, unlawful, incompetent, or fraudulent conduct; reporting procedures. Amends 828 IAC 1-2-1, 828 IAC 1-2-2, 828 IAC 1-2-3, 828 IAC 1-2-6, 828 IAC 1-2-8, 828 IAC 1-2-9, 828 IAC 1-2-10, and 828 IAC 1-2-12 concerning the examination for licensure to practice dental hygiene. Amends 828 IAC 1-2-14 concerning remedial education. Amends 828 IAC 1-3-1, 828 IAC 1-3-4, and 828 IAC 1-3-5. Repeals 828 IAC 1-1-4, 828 IAC 1-1-11, 828 IAC 1-2-4, and 828 IAC 1-2-11. Effective 30 days after filing with the secretary of state.

828 IAC 1-1-2	828 IAC 1-2-2
828 IAC 1-1-3	828 IAC 1-2-3
828 IAC 1-1-4	828 IAC 1-2-4
828 IAC 1-1-6	828 IAC 1-2-6
828 IAC 1-1-8	828 IAC 1-2-8
828 IAC 1-1-9	828 IAC 1-2-9
828 IAC 1-1-10	828 IAC 1-2-10
828 IAC 1-1-11	828 IAC 1-2-11
828 IAC 1-1-12	828 IAC 1-2-12
828 IAC 1-1-18	828 IAC 1-2-14
828 IAC 1-1-21	828 IAC 1-3-1
828 IAC 1-1-23	828 IAC 1-3-4
828 IAC 1-2-1	828 IAC 1-3-5

SECTION 1. 828 IAC 1-1-2 IS AMENDED TO READ AS FOLLOWS:

ARTICLE 1. LICENSURE OF DENTISTS AND DENTAL HYGIENISTS

Rule 1. Dentists; Licensure by Examination

828 IAC 1-1-2 Application forms; time for filing required documents

Authority: IC 25-14-1-13
 Affected: IC 25-14-1-3; IC 25-14-1-16

Sec. 2. (a) The applicant for examination must complete the application on forms prescribed and provided by the board. All statements contained in the application must be verified by the applicant. The verified application, all examination fees, and other documents that the board may require ~~shall be delivered~~ **must be submitted** to the board office at least ~~thirty (30)~~ **forty-five (45)** days prior to the first day of the examination.

(b) Proof that the applicant is a graduate of a dental school that is recognized by the board must be submitted to the board at least seven (7) days prior to the examination. The following documents must be submitted:

- (1) An official transcript showing the date the degree was conferred.
- (2) An official diploma or a certificate of completion signed by the dean of the applicant's professional school and the registrar of the university or college.

(State Board of Dentistry; PT 1, Rule 2; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 49; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 191; filed Oct 16, 1985, 3:57 p.m.: 9 IR 520; filed Oct 12, 1993, 5:00 p.m.: 17 IR 400; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896)

SECTION 2. 828 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-3 Examinations required for licensure

Authority: IC 25-14-1-13
 Affected: IC 25-14-1-3

Sec. 3. (a) In order to obtain an Indiana license to practice dentistry, each candidate must pass a three (3) part examination which includes the following:

- (1) All sections of the national dental board examination.
- (2) A clinical-practical examination, which ~~includes~~ **may include** a written section.
- (3) A written examination covering Indiana law relating to the practice of dentistry and dental hygiene.

(b) A passing score must be obtained on all sections of the national board dental examination before any candidate may take the clinical-practical or law examinations. *(State Board of Dentistry; PT 1, Rule 3; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 49; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 192; filed Apr 19, 1991, 3:00 p.m.: 14 IR 1726; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896)*

SECTION 3. 828 IAC 1-1-6 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-6 National board examination; dental and dental hygiene law examinations

Authority: IC 25-14-1-13
 Affected: IC 25-14-1-13

Sec. 6. (a) A passing score on a national board ~~theory~~ dental examination, as approved by the board, must be attained by the candidate before the candidate will be permitted to take the clinical-practical portion of the examination **and the written examination covering Indiana law relating to the practice of dentistry and dental hygiene.**

(b) Passage of the Indiana dental and dental hygiene law examination with a ~~grade score~~ of at least seventy-five percent ~~(75%)~~ **(75)** is mandatory before the candidate may be licensed. Candidates failing the law examination may retake the law examination at a time, date, and place to be set by the board not sooner than thirty (30) days from the time the law examination was last taken.

~~(c) Candidates failing the written section of the clinical-practical examination only may retake the written section of the clinical-practical examination at a time, date, and place to be set by the board not sooner than thirty (30) days from the time the clinical-practical examination was last taken.~~ *(State Board of Dentistry; PT 1, Rule 6; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 50; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 192; filed Apr 12, 1984, 8:34 a.m.: 7 IR 1520; filed Nov 7, 1986, 9:00 a.m.: 10 IR 431; filed Apr 19, 1991, 3:00 p.m.: 14 IR 1726; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896)*

SECTION 4. 828 IAC 1-1-8 IS AMENDED TO READ AS FOLLOWS:

Proposed Rules

828 IAC 1-1-8 Supplies for examinations; duty to provide

Authority: IC 25-14-1-13

Affected: IC 25-14-1-3

Sec. 8. ~~The Board will provide manuscripts for the examinations.~~ The candidate will provide all patients instruments and materials for the examinations. (*State Board of Dentistry; PT 1, Rule 8; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 50; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 192; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 5. 828 IAC 1-1-9 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-9 Conduct during written examinations

Authority: IC 25-14-1-13

Affected: IC 25-14-1-3

Sec. 9. ~~Conduct of candidates during examinations.~~ The candidates are not allowed to leave the room nor move about in the room during ~~an a~~ written examination without permission. No other paper or books, other than the **written examination manuscripts, and answer sheet**, shall be used in examination room for any purpose whatsoever. (*State Board of Dentistry; PT 1, Rule 9; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 50; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 192; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 6. 828 IAC 1-1-10 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-10 Dismissal of candidate for use of unfair assistance

Authority: IC 25-14-1-13

Affected: IC 25-14-1-3

Sec. 10. ~~Use of unfair assistance during examination.~~ The board reserves the right to dismiss any candidate who may be detected in using, or attempting to use, any unfair assistance for himself **or herself** or another candidate. (*State Board of Dentistry; PT 1, Rule 10; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 50; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 192; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 7. 828 IAC 1-1-12 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-12 Failure; reexamination

Authority: IC 25-14-1-13

Affected: IC 25-14-1-3

Sec. 12. (a) If the candidate fails in securing a passing ~~grade~~ **score** in only one (1) section of the clinical-practical examination, the candidate will be required to retake that section only, provided that the candidate return for one (1) of the two (2) next succeeding examinations. If the candidate does not take and

pass the failed section on one (1) of the next two (2) available examination dates, a new application must be filed and all sections of the clinical-practical examination must be retaken.

(b) If the candidate fails in two (2) or more parts of the clinical-practical examination, the candidate must take an entire new clinical-practical examination.

(c) If the candidate fails the same section of the clinical-practical examination three (3) times, the entire clinical-practical examination must be retaken. (*State Board of Dentistry; PT 1, Rule 12; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 50; filed May 16, 1977, 10:10 a.m.: Rules and Regs. 1978, p. 193; filed Apr 19, 1991, 3:00 p.m.: 14 IR 1726; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 8. 828 IAC 1-1-18 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-18 Advertising; content

Authority: IC 25-13-1-5; IC 25-14-1-13; IC 25-14-4-9

Affected: IC 25-1-9; IC 25-14-1; IC 25-14-4-4

Sec. 18. (a) Fees for any or all dental services may be advertised; however, violation of any of the provisions in this section may be construed as false, misleading, or deceptive.

(b) An advertisement of a fee for a dental service must include a specified period for which that fee shall be in effect, or that service must remain available at or below that fee for a minimum period of ninety (90) days following the final advertisement for that service, unless that service is found to be detrimental to the health of the public.

(c) A service advertised as routine or with a stated fee must include all components of providing that service without additional charges added thereto or without additional unstated restrictions.

(d) Discount offers for a dental service are permissible for advertising only when:

- (1) the nondiscounted or full price and the final discounted price are also disclosed in the advertisement; and
- (2) such discount is not contingent upon the procurement of additional patients, potential patients, or the purchase of additional services.

The dates a discount will be in force must be clearly identified.

(e) When an office charges a range of fees for a dental service, any advertisement of the fee for that service must disclose the range and include a listing of all of the factors which cause the fee to vary.

(f) A dentist may advertise as being a specialist in, or limiting practice to, a particular field of dentistry in:

- (1) dental public health;
- (2) endodontics;

(3) oral and maxillofacial pathology;
 (4) oral and maxillofacial radiology;
~~(4)~~ (5) oral and maxillofacial surgery;
~~(5)~~ (6) orthodontics and dentofacial orthopedics;
~~(6)~~ pedodontics or (7) pediatric dentistry;
~~(7)~~ (8) periodontics; or
~~(8)~~ (9) prosthodontics;
 provided the dentist has graduated from an accredited advanced dental educational program.

(g) An accredited advanced dental educational program is one that meets the requirements and standards of:

- (1) The Commission on Dental Accreditation Standards for Advanced Specialty Education Programs in General Practice Residency Dentistry published in December 1998; revised January 1993 by 2000.
- (2) The Commission on Dental Accreditation American Dental Association, which shall not include any later amendments or editions; or is listed in the May 1993 edition of Advanced Dental Educational Programs of the Commission on Dental Accreditation of the American Dental Association; which shall not include any later amendments or editions. Standards for Advanced Specialty Education Programs in General Practice Residency published in 2000.
- (3) The Commission on Dental Accreditation Standards for Advanced Specialty Education Programs in Dental Public Health, published in 2000.
- (4) The Commission on Dental Accreditation Standards for Advanced Specialty Education Programs in Endodontics published in 2000.
- (5) The Commission on Dental Accreditation Standards for Advanced Specialty Education Programs in Oral and Maxillofacial Pathology published in 2000.
- (6) The Commission on Dental Accreditation Standards for Advanced Specialty Education Programs in Oral and Maxillofacial Radiology published in 2000.
- (7) The Commission on Dental Accreditation Standards for Advanced Specialty Education Programs in Oral and Maxillofacial Surgery published in 2000.
- (8) The Commission on Dental Accreditation Standards for Advanced Specialty Education Programs in Orthodontics and Dentofacial Orthopedics published in 2000.
- (9) The Commission on Dental Accreditation Standards for Advanced Specialty Education Programs in Pediatric Dentistry published in 2000.
- (10) The Commission on Dental Accreditation Standards for Advanced Specialty Education Programs in Periodontics published in 2000.
- (11) The Commission on Dental Accreditation Standards for Advanced Specialty Education Programs in Prosthodontics published in 2000.

The requirements and These standards and list of accredited programs are hereby incorporated by reference and made applicable to this section. A copy Copies of the standards and

requirements and list of accredited programs shall be are available for public inspection at the offices of the Health Professions Bureau, 402 West Washington Street, Room 041, W041, Indianapolis, Indiana 46204. Copies of the standards and requirements and list of accredited programs are available from the entity originally issuing the incorporated matter, the Commission on Dental Accreditation, American Dental Association, 211 East Chicago Avenue, Chicago, Illinois 60611.

~~(g)~~ (h) As used in this section, "specialist" pertains to this section only for the purpose of defining advertising and must not be randomly applied to any other law or rule of IC 25-14.

~~(h)~~ (i) This section does not preclude or limit any dentist from offering and performing any treatment to any patient as prescribed by IC 25-14.

~~(i)~~ (j) All dentists who have claimed to be dental specialists, or hold themselves out to be engaged in a dental practice limited to any of the dental specialties in subsection (f), without regard to the matter incorporated by reference in subsection (f), and can document such claim to have acted as such prior to January 1, 1965, may continue to act as such under the protection of this rule.

~~(j)~~ (k) A dentist who is not considered a specialist by this section and who wishes to announce the services available in his or her practice may announce the availability of those services so long as he or she avoids any communications that express or imply specialization. The dentist shall also state that the services are being provided by a general dentist. No dentist shall announce available services in any way that would be false or misleading in any material respect.

~~(k)~~ (l) The factors of availability such as hours of practice and office locations may be advertised provided that any such advertisement must include the names of all practitioners providing dental services at each location.

~~(l)~~ (m) An advertisement indicating that superior services, better materials, or more skillful care are available in a particular office or by a group of practitioners may be deceptive.

~~(m)~~ (n) Guarantees or warranties, whether expressed or implied, regarding the successful outcome of treatment, length of service, or durability of materials may be deceptive if advertised. Any testimonials or endorsements such as character witness, benefits of treatment, or expressions of appreciation may be misleading when advertised.

~~(n)~~ (o) A referral service shall only advertise a dentist as a specialist if such dentist has complied with subsections (f) through ~~(j)~~ (k) and has presented such referral service with verification of compliance. An advertisement for a dentist not

Proposed Rules

complying with subsections (f) through (j) (k) may only claim the dentist may provide routine dental services and other services and that the dentist is not to be considered a specialist.

(p) Referral services shall provide disclaimers in compliance with IC 25-14-4-4. A disclaimer shall be written for advertisements placed in written media, audio for radio advertisements, and both audio and visual for television advertisements.

(q) Advertising in any media by a referral service must not lead consumers to believe that they are receiving an impartial referral based on all dentists in the area instead of only those dentists participating in the referral service. (*State Board of Dentistry; 828 IAC 1-1-18; filed Apr 14, 1983, 9:40 a.m.: 6 IR 1084; filed Jan 16, 1986, 3:17 p.m.: 9 IR 1364; filed Aug 29, 1986, 2:30 p.m.: 10 IR 21; filed Aug 9, 1994, 2:45 p.m.: 17 IR 2867; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 9. 828 IAC 1-1-21 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-21 Remedial education

Authority: IC 25-14-1-3; IC 25-14-1-13

Affected: IC 25-14-1-3

Sec. 21. A candidate for dental licensure shall complete remedial education following the failure of two (2) or more clinical examinations prior to being permitted to retake the examination. The assignment of remedial education, either academic and/or clinical, shall be in the subject or subjects previously failed. Courses to be taken shall be submitted to the board for prior approval by the board and certification that they were successfully completed shall be submitted to the board. The certification shall be signed by the dean **or the dean's appointed representative** of the dental school where the courses were taken. All courses shall be taken in board approved schools. All courses shall be completed and the certification shall be submitted **by the deadline for at least seven (7) days prior to the next examination the candidate is sitting for next: has applied to take.** (*State Board of Dentistry; 828 IAC 1-1-21; filed Jan 16, 1986, 3:17 p.m.: 9 IR 1366; filed Feb 3, 1987, 12:30 p.m.: 10 IR 1273; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 10. 828 IAC 1-1-23 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-23 Illegal, unlawful, incompetent, or fraudulent conduct; reporting procedures

Authority: IC 25-14-1-13

Affected: IC 25-1-9; IC 25-14-1

Sec. 23. (a) A dentist who has a reasonable belief based upon personal knowledge that another dentist has engaged in illegal, unlawful, incompetent, or fraudulent conduct in the practice of dentistry shall promptly report such conduct to a peer review committee, as defined in IC 34-4-12.6-1(c) [*IC 34-4 was*

repealed by P.L.1-1998, SECTION 221, effective July 1, 1998.], having jurisdiction over the offending dentist and the matter. This subsection does not prohibit a dentist from promptly reporting the conduct directly to the board **of dental examiners or to the consumer protection division of the office of the attorney general of Indiana.**

(b) A dentist who has personal knowledge of any person engaged in, or attempting to engage in, the unauthorized practice of dentistry shall promptly report such conduct to the board **of dental examiners or to the consumer protection division of the office of the attorney general of Indiana.**

(c) A dentist who voluntarily submits to, or is otherwise undergoing, a course of treatment for addiction, severe dependency upon alcohol, other drugs, or controlled substances, or psychiatric impairment, where such treatment is sponsored or supervised by an impaired practitioner's committee of a state, regional, or local organization of professional health care providers, or where such treatment is sponsored or supervised by an impaired practitioner's committee of a hospital, shall be exempt from reporting to a peer review committee as set forth in subsection (a) or to the board **of dental examiners or to the consumer protection division of the office of the attorney general of Indiana** for so long as:

- (1) the dentist is complying with the course of treatment;
- (2) the dentist is making satisfactory progress; and
- (3) the dentist has not engaged in illegal, unlawful, incompetent, or fraudulent conduct in the practice of dentistry beyond the practitioner's addiction, severe dependency upon alcohol, other drugs, or controlled substances, or psychiatric impairment.

(d) If the dentist fails to comply with, or fails to make satisfactory progress in, the course of treatment, the chief administrative officer, the designee of the chief administrative officer, or any member of the impaired practitioner's committee shall promptly report such facts and circumstances to the board **of dental examiners: or to the consumer protection division of the office of the attorney general of Indiana.**

(e) This section shall not, in any manner whatsoever, directly or indirectly, be deemed or construed to prohibit, restrict, limit, or otherwise preclude the board **of dental examiners** from taking such action as it deems appropriate or as may otherwise be provided by law. (*State Board of Dentistry; 828 IAC 1-1-23; filed Oct 5, 1993, 5:00 p.m.: 17 IR 199; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 11. 828 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

Rule 2. Dental Hygienists; Licensure by Examination

828 IAC 1-2-1 Qualifications of applicants; approved dental hygiene schools

Authority: IC 25-13-1-5

Affected: IC 25-13-1-6

Sec. 1. All applicants for licensure to practice dental hygiene must have graduated from an accredited and approved dental hygiene school and must submit certification of having completed within the prior year an American Red Cross or American Heart Association ~~cardio-pulmonary~~ **cardiopulmonary** resuscitation course or such course as may be approved by the board. An approved dental ~~hygienist~~ **hygiene** school is one ~~which that~~ requires the following:

- (1) Graduation from high school or equivalent training.
- (2) Two (2) academic years in a dental ~~hygienist~~ **hygiene** school ~~which that~~ presents a curriculum, including at least the following subjects:
 - (A) Anatomy, general and dental.
 - (B) Pharmacology.
 - (C) Microbiology **and immunology**.
 - (D) Radiology.
 - (E) Physiology.
 - (F) Preventive dentistry.
 - (G) ~~Clinical practice~~. **Dental hygiene science**.
 - (H) Histology.
 - (I) Chemistry.
 - (J) Dental materials.
 - (K) ~~Laboratory procedures~~. **Periodontology**.
 - (L) ~~Diet and~~ Nutrition.
 - (M) Pathology.
 - (N) **Oral and written communication**.
 - (O) **Psychology**.
 - (P) **Sociology**.

(State Board of Dentistry; PT 2, Rule 1; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 51; filed Nov 7, 1980, 12:45 p.m.: 3 IR 2190; filed Oct 12, 1993, 5:00 p.m.: 17 IR 401; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896)

SECTION 12. 828 IAC 1-2-2 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-2 Application forms; time for filing required documents

Authority: IC 25-13-1-5
Affected: IC 25-13-1-4

Sec. 2. (a) The applicant for examination must complete the application on forms prescribed and provided by the board. **The applicant shall verify** all statements contained in the application. ~~shall be verified by the applicant~~. The verified application, all examination fees, and other documents that the board may require ~~shall must be delivered~~ **submitted** to the board office at least ~~thirty (30)~~ **forty-five (45)** days prior to the first day of the examination.

(b) Proof that the applicant is a graduate of a school ~~for of~~ dental ~~hygienists~~ **hygiene** that is recognized by the board must be submitted to the board at least seven (7) days prior to the examination. The following documents must be submitted:

- (1) An official transcript showing the date the degree was conferred.

(2) An official diploma or a certificate of completion signed by the dean and the registrar of the applicant's school.

(State Board of Dentistry; PT 2, Rule 2; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 52; filed Oct 16, 1985, 3:57 p.m.: 9 IR 522; filed Oct 12, 1993, 5:00 p.m.: 17 IR 401; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896)

SECTION 13. 828 IAC 1-2-3 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-3 Examinations required for licensure

Authority: IC 25-13-1-5
Affected: IC 25-13-1-4; IC 25-13-1-7

Sec. 3. (a) In order to obtain an Indiana license to practice dental hygiene, each candidate must pass a three (3) part examination which includes the following:

- (1) All sections of the national dental hygiene board examination.
- (2) A clinical-practical examination, which ~~includes may~~ **include** a written portion.
- (3) A written examination covering Indiana law relating to the practice of dentistry and dental hygiene.

(b) A passing score must be obtained on all sections of the national board dental hygiene examination before any candidate may take the clinical-practical or law examinations. *(State Board of Dentistry; PT 2, Rule 3; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 52; filed Apr 19, 1991, 3:00 p.m.: 14 IR 1727; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896)*

SECTION 14. 828 IAC 1-2-6 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-6 National board examination; dental and dental hygiene law examination

Authority: IC 25-13-1-5
Affected: IC 25-13-1-4; IC 25-13-1-7

Sec. 6. (a) A passing score on a national board dental hygiene examination, as approved by the board, must be attained by the candidate before the candidate will be permitted to take the clinical-practical portion of the examination.

(b) Passage of the Indiana dental and dental hygiene law examination with a ~~grade score~~ of at least seventy-five percent ~~(75%)~~ **(75)** is mandatory before the candidate may be licensed. Candidates failing the law examination may retake the law examination at a time, date, and place to be set by the board not sooner than thirty (30) days from the time the law examination was last taken.

(c) Candidates failing the written ~~radiology section of the clinical-practical~~ **clinical practice** examination only may retake the written ~~radiology section of the clinical-practical~~ **clinical practice** examination at a time, date, and place to be set by the board not sooner than thirty (30) days from the time the clinical-

Proposed Rules

practical examination was last taken. (*State Board of Dentistry; PT 2, Rule 6; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 52; filed Apr 12, 1984, 8:34 a.m.: 7 IR 1521; filed Nov 7, 1986, 9:00 a.m.: 10 IR 431; filed Apr 19, 1991, 3:00 p.m.: 14 IR 1727; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1014; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 15. 828 IAC 1-2-8 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-8 Supplies for examinations; duty to provide

Authority: IC 25-13-1-5

Affected: IC 25-13-1-7

Sec. 8. ~~The Board will provide manuscripts for the examinations.~~ The candidates will provide all patients instruments and materials for the examinations. (*State Board of Dentistry; PT 2, Rule 8; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 52; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 16. 828 IAC 1-2-9 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-9 Conduct during examinations

Authority: IC 25-13-1-5

Affected: IC 25-13-1-7

Sec. 9. ~~Conduct of the candidates during examinations.~~ Candidates are not allowed to leave the room nor move about in the room during ~~an a written~~ examination without permission. No other paper or books, other than the **written** examination, ~~manuscripts~~, shall be used in examination room for any purpose whatsoever. (*State Board of Dentistry; PT 2, Rule 9; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 53; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 17. 828 IAC 1-2-10 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-10 Dismissal of candidate for use of unfair assistance

Authority: IC 25-13-1-5

Affected: IC 25-13-1-7

Sec. 10. ~~Use of unfair assistance during examination.~~ The board reserves the right to dismiss any applicant who may be detected in using, or attempting to use, any unfair assistance for herself **or himself** or another candidate. (*State Board of Dentistry; PT 2, Rule 10; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 53; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 18. 828 IAC 1-2-12 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-12 Failure; reexamination

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-13-1-4; IC 25-13-1-7; IC 25-14-1-1; IC 25-14-1-3

Sec. 12. (a) If the candidate fails in securing a passing ~~grade~~ **score** in only one (1) section of the clinical-practical examination, the candidate will be required to retake that section only, provided that the candidate return for one (1) of the two (2) next succeeding examinations. If the candidate does not take and pass the failed section on one (1) of the next two (2) available examination dates, a new application must be filed and all sections of the clinical-practical examination must be retaken.

(b) If the candidate fails in two (2) or more parts of the clinical-practical examination, the candidate must take an entire new clinical-practical examination.

(c) If the candidate fails the same section of the clinical-practical examination three (3) times, the entire clinical-practical examination must be retaken. (*State Board of Dentistry; PT 2, Rule 12; filed Aug 10, 1973, 11:00 a.m.: Rules and Regs. 1974, p. 53; filed Nov 7, 1980, 12:45 p.m.: 3 IR 2190; filed Apr 25, 1983, 8:52 a.m.: 6 IR 1086; filed Apr 19, 1991, 3:00 p.m.: 14 IR 1727; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 19. 828 IAC 1-2-14 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-14 Remedial education

Authority: IC 25-13-1-5

Affected: IC 25-13-1-5

Sec. 14. A candidate for dental hygiene licensure shall complete remedial education following the failure of two (2) or more clinical examinations prior to being permitted to retake the examination. The assignment of remedial education, either academic and/or clinical, shall be in the subject or subjects previously failed. Courses to be taken shall be submitted to the board for prior approval by the board and certification that they were successfully completed shall be submitted to the board. The certification shall be signed by the dean **or the dean's appointed representative** of the dental hygiene school where the courses were taken. All courses shall be taken in board approved schools. All courses shall be completed and the certification shall be submitted ~~by the deadline for~~ **at least seven (7) days prior to the next examination** the candidate is ~~sitting for next:~~ **has applied to take.** (*State Board of Dentistry; 828 IAC 1-2-14; filed Jan 16, 1986, 3:17 p.m.: 9 IR 1366; filed Feb 3, 1987, 12:30 p.m.: 10 IR 1273; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 20. 828 IAC 1-3-1 IS AMENDED TO READ AS FOLLOWS:

Rule 3. Dentists and Dental Hygienists; Licensure by Endorsement

828 IAC 1-3-1 Licensure by endorsement; credentials; examination and interview

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-13-1-7; IC 25-13-1-17; IC 25-14-1-16

Sec. 1. (a) **Licensure by endorsement certification** may be granted to an applicant who meets the ~~educational and certification requirements of the Indiana state board, of dental examiners;~~ only upon the basis of a valid ~~certificate which license that~~ has been obtained by regular state board examination, in any other state having and maintaining a standard of examination for ~~certification licensure~~ and of laws regulating such practice within the state, substantially equivalent to Indiana, of which fact the board shall be the sole judge.

(b) Any person holding a valid, unrevoked and unexpired ~~certificate license~~ to practice dentistry and has maintained an active dental practice for not less than five (5) years out of the last nine (9) years immediately prior to submitting the application, and who is reputable as a dentist and deposits with the board the required credentials to be considered for endorsement.

(c) Any person holding a valid, unrevoked and unexpired ~~certificate license~~ to practice dental hygiene and has maintained an active dental hygiene practice for not less than five (5) years out of the last seven (7) years immediately prior to submitting the application, and who is reputable as a dental hygienist and deposits with the board the required credentials to be considered for endorsement.

(d) Required credentials **for dental and dental hygiene applicants** must include:

- (1) Completed application and ~~endorsement~~ fee (not returnable).
- (2) ~~Shall submit to the state board of dental examiners his diploma from a dental college recognized by the Indiana state board of dental examiners. A copy of the applicant's current cardiopulmonary resuscitation card, signed by the applicant.~~
- (3) National board final ~~grade score~~ card or equivalent.
- (4) Transcripts from ~~pre-dental and dental schools or schools of dental hygiene.~~
- (5) ~~Certified statements of Verification of license status from each dental examining and certification health care professional licensing board of states in which applicant is certified: or has been licensed.~~
- (6) Affidavits of at least three (3) practicing dentists verifying ~~your the applicant's~~ active, moral, and ethical practice of dentistry for the past five (5) years or the ethical practice of dental hygiene for the past five (5) years.
- (7) ~~Statement from applicant stating that he will appear for interview at the request of the board.~~

(e) Applicant shall be interviewed and examined in the laws of Indiana relating to dentistry and dental hygiene and after careful evaluation of application and qualifications; applicant **MAY** be required to take such other portions of the Indiana examination as the board **MAY** deem necessary and pass such examination to the satisfaction of the board; as is required of

other applicants for certification to practice dentistry or dental hygiene in the state of Indiana.

(f) (e) The same standard of educational requirements applies to applicants for ~~certification licensure~~ through endorsement as for ~~certification licensure~~ by examination.

(g) (f) An applicant who has previously failed an examination for ~~certification licensure administered~~ by the ~~Indiana state board of dental examiners~~ is not eligible to apply for endorsement, until such applicant has passed all portions of the examination in which he or she failed or provides the board with proof that additional training has been received in the subjects of the failure.

(h) ~~At the discretion of the Indiana state board of dental examiners the applicant MAY be issued a certificate to practice dentistry or dental hygiene in the state of Indiana. (State Board of Dentistry; Endorsement Certification; filed Oct 8, 1974, 9:15 a.m.: Rules and Regs. 1975, p. 233; filed Jan 12, 1984, 11:32 a.m.: 7 IR 698; filed Aug 29, 1986, 2:30 p.m.: 10 IR 22; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896)~~

SECTION 21. 828 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-3-4 Dental licensure by endorsement; failure to renew expired license

Authority: IC 25-14-1-13
Affected: IC 25-14-1-10; IC 25-14-1-16

Sec. 4. The holder of a license ~~which that~~ has expired under IC 25-14-1-10 for failure to renew may not apply for licensure by endorsement under IC 25-14-1-16(b) and this rule if the holder of the license has practiced dentistry in Indiana during the period of time while the license was expired. (*State Board of Dentistry; 828 IAC 1-3-4; filed Feb 4, 1994, 5:00 p.m.: 17 IR 1094; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 22. 828 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-3-5 Dental hygiene licensure by endorsement; failure to renew expired license

Authority: IC 25-13-1-5
Affected: IC 25-13-1-8; IC 25-13-1-17

Sec. 5. The holder of a license ~~which that~~ has expired under IC 25-13-1-8 for failure to renew may not apply for licensure by endorsement under IC 25-13-1-17(a) and this rule if the holder of the license has practiced dental hygiene in Indiana during the period of time while the license was expired. (*State Board of Dentistry; 828 IAC 1-3-5; filed Feb 4, 1994, 5:00 p.m.: 17 IR 1094; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896*)

SECTION 23. THE FOLLOWING ARE REPEALED: 828 IAC 1-1-4; 828 IAC 1-1-11; 828 IAC 1-2-4; 828 IAC 1-2-11.

Proposed Rules

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 2, 2001 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Rooms 1 and 2, Indianapolis, Indiana the State Board of Dentistry will hold a public hearing on proposed amendments regarding the examination for licensure to practice dentistry; advertising; remedial education for dental and dental hygiene licensure applicants; illegal, unlawful, incompetent, or fraudulent conduct; and the examination for licensure to practice dental hygiene. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W041 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Lisa R. Hayes
Executive Director
Health Professions Bureau

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

Proposed Rule
LSA Document #01-235

DIGEST

Adds 844 IAC 11-3-3.1 to establish licensure by credentials for respiratory care practitioners. Adds 844 IAC 11-3-4.1 to establish temporary permits by examination for respiratory care practitioners. Effective 30 days after filing with the secretary of state.

844 IAC 11-3-3.1

844 IAC 11-3-4.1

SECTION 1. 844 IAC 11-3-3.1 IS ADDED TO READ AS FOLLOWS:

844 IAC 11-3-3.1 Licensure by credentials

Authority: IC 25-34.5-2-7
Affected: IC 25-34.5-2-6

Sec. 3.1. The committee may issue a license by credentials to an applicant who completes the following:

- (1) Applies to the committee in the form and manner required by the board.
- (2) Submits the fee required under 844 IAC 11-2-1.
- (3) Submits two (2) recent passport-quality photographs of the applicant, no smaller than two (2) inches by two (2) inches, each signed by the applicant at the bottom in black ink.
- (4) Submits an official transcript of grades from the school or program from which the applicant obtained the applicant's degree, which shows that all requirements for

graduation have been met by the applicant, that meets the standards set by the board under 844 IAC 11-1-2.

(5) Submits an official credentials report, which verifies passing a respiratory care practitioner examination, approved by the board.

(6) If five (5) years have elapsed since the successful completion of the examination, required by the board, the applicant must take and successfully complete an examination approved by board within six (6) months of the date of application for licensure.

(7) Otherwise meets the requirements of IC 25-34.5-2. (Medical Licensing Board of Indiana; 844 IAC 11-3-3.1)

SECTION 2. 844 IAC 11-3-4.1 IS ADDED TO READ AS FOLLOWS:

844 IAC 11-3-4.1 Temporary permits by examination

Authority: IC 25-34.5-2-6; IC 25-34.5-2-7
Affected: IC 25-34.5-2-10.1

Sec. 4.1. (a) An applicant for a temporary permit by examination under IC 25-34.5-2-10.1(a)(3) will be required to take the examination for licensure within six (6) months after graduation.

(b) The temporary permit by examination will expire six (6) months after graduation.

(c) If the applicant fails to take the examination within the six (6) month period and presents an explanation to the committee in writing, which shows good cause for not taking the examination, the committee may allow the applicant to renew their temporary permit.

(d) The committee shall not issue or renew a temporary permit to an applicant who has failed the examination. (Medical Licensing Board of Indiana; 844 IAC 11-3-4.1)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 25, 2001 at 9:45 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Rooms 4 and 5, Indianapolis, Indiana the Medical Licensing Board of Indiana will hold a public hearing on proposed new rules to establish licensure by credentials and temporary permits by examination for respiratory care practitioners. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W041 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Lisa R. Hayes
Executive Director
Health Professions Bureau

**TITLE 844 MEDICAL LICENSING BOARD OF
INDIANA**

Proposed Rule
LSA Document #01-248

DIGEST

Adds 844 IAC 11-2-1.1 concerning fees for respiratory care practitioners. Repeals 844 IAC 11-2-1. Effective 30 days after filing with the secretary of state.

844 IAC 11-2-1
844 IAC 11-2-1.1

SECTION 1. 844 IAC 11-2-1.1 IS ADDED TO READ AS FOLLOWS:

844 IAC 11-2-1.1 Fees

Authority: IC 25-1-8-2; IC 25-34.5-2-7
Affected: IC 25-34.5-2

Sec. 1. The board shall charge and collect the following fees:

Application for licensure	\$50
Biennial renewal of licensure	\$50
Verification of licensure	\$10
Duplicate wall license	\$10
Temporary permit	\$25
Renewal of a temporary permit	\$10
Student permit	\$25

(Medical Licensing Board of Indiana; 844 IAC 11-2-1.1)

SECTION 2. 844 IAC 11-2-1 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 25, 2001 at 9:50 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Rooms 4 and 5, Indianapolis, Indiana the Medical Licensing Board of Indiana will hold a public hearing on proposed new rules to establish fees for respiratory care practitioners. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W041 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Lisa R. Hayes
Executive Director
Health Professions Bureau