

SETTLEMENT AGREEMENT

This Agreement ("Agreement") is made and entered into by and among The Indiana Association of Residential Child Care Agencies, Inc. d/b/a IARCCA, an Association of Children and Family Services ("IARCCA"); the Indiana Department of Child Services ("DCS"); and John P. Ryan, Director, in his official capacity ("Ryan") (DCS and Ryan are referred to collectively as "DCS" or the "Defendants").

The Parties agree as follows:

1. **2013 Rates.** The following will apply to all rates set pursuant to rule and payable to providers for 2013 placement and care:
 - a. DCS will set rates for 2013 pursuant to rule and in accordance with the Provider Manual Bulletins attached hereto as Exhibits A and B. DCS will publish the attached Provider Manual Bulletins within five (5) business days after this Settlement Agreement is approved.
 - b. DCS will not amend the administrative rules that currently govern the setting of rates for providers (465 IAC 2-16, 2-17 et seq.) or the Provider Manual Bulletins (Exhs. A and B) or otherwise effect any change in the rate-setting process that is materially inconsistent with or not provided for in this settlement agreement, for rates payable in 2013.
 - c. Nothing in this Settlement Agreement affects the right of any provider to use and benefit from any appeal or other process available to affect that provider's individual rate.
2. **Meetings Between The Parties.** Members of IARCCA's and DCS's leadership agree to meet in person on a regular basis during 2013 and 2014 not fewer than six (6) times during each calendar year. The purpose of the meetings is to monitor the relationship between the parties, to assess whether the rates in place are covering the reasonable costs of care, and to enhance Indiana's child welfare system.
3. **Dismissal.** IARCCA will sign and forward to Defendants' counsel within ten (10) business days after the effective date of this Agreement the Stipulation of Dismissal with prejudice attached hereto as Exhibit C. Defendants will sign and file the Stipulation of Dismissal within ten (10) business days after receipt from IARCCA and seek entry of the Order of Dismissal attached hereto as Exhibit D.
4. **Applicable Law and Enforceability.** This Agreement shall be construed, interpreted, governed, and enforced in accordance with the laws of the State of Indiana. The parties agree that this Agreement may be enforced, and any dispute arising out of or related to it may be brought, in state court in Marion County, Indiana.
5. **Entire Agreement.** This Agreement constitutes the only existing and binding agreement of settlement among the Parties, and the Parties acknowledge that there are no other warranties, promises, assurances or representations of any kind, express or implied, upon which the Parties have relied in entering into this Agreement, unless expressly set forth herein. This Agreement shall not be modified except by written agreement signed by the party against whom modification is sought.

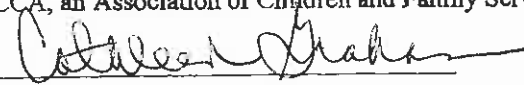
6. **Warranty.** Each party warrants (a) that the person executing this Agreement on its behalf has the authority to do so; and (b) the rights and obligations created under this Agreement have not been assigned or otherwise transferred to any other person or entity.
7. **Acknowledgment of Terms.** The Parties have read and understand the terms of this Agreement, have consulted with their respective counsel, and understand and acknowledge the significance and consequence of each such term.
8. **Representation by Counsel.** The Parties hereto agree that they enter into this Agreement after having received full advice from counsel of their choice with respect to this Agreement and all other matters related thereto.
9. **Execution of Documents.** This Agreement may be executed in counterparts, that is, all signatures need not appear on the same copy. All such executed copies shall together constitute the complete Agreement.
10. **Effective Date.** The Effective Date of this Agreement shall be the last date on which it was signed by a Party hereto.
11. **Notices.** Notices to the parties under this Agreement will be to the following:

As to IARCCA: 5519 E. 82nd St. Suite A, Indianapolis, IN 46250
Attn: Executive Director

As to Defendants: Indiana Department of Child Services
302 W. Washington St., E306-MS47, Indianapolis, IN 46204
Attn: Director

Dated: 11-26-12

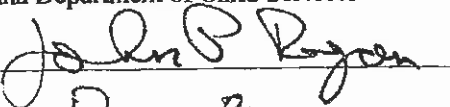
IARCCA, an Association of Children and Family Services

By: 

Its: EXECUTIVE DIRECTOR

Dated: 11/20/12

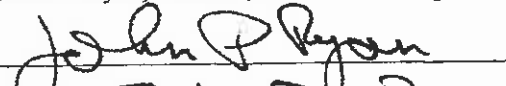
Indiana Department of Child Services

By: 

Its: Director

Dated: 11/20/12

John P. Ryan, Director, in his official capacity



Printed: John P. Ryan

EXHIBIT A



Mitchell E. Daniels, Jr., Governor
John P. Ryan, Director

Indiana Department of Child Services
Room E306 – MS47
302 W. Washington Street
Indianapolis, Indiana 46204-2738

317-234-KIDS
FAX: 317-232-4497

www.in.gov/dcs

Child Support Hotline: 800-840-8757
Child Abuse and Neglect Hotline: 800-800-5556

**PROVIDER MANUAL: RESIDENTIAL TREATMENT SERVICES PROVIDER RATES BULLETIN
2012-3**

November 21, 2012

COST CAPS FOR 2013 RATES – RESIDENTIAL PROVIDERS

Pursuant to rule found at 465 IAC 2-16 DCS annually sets cost-based rates for Residential Treatment Services Providers (“RTSPs”). This annual rate setting is done pursuant to the methods stated in the rule. As a result of settlement negotiations between DCS and IARCCA regarding the current IARCCA lawsuit regarding 2012 rate setting, DCS has opted to make certain adjustments to various ratios and caps for 2013. The following describes those adjustments and the anticipated effects of those adjustments.

1) Administrative Cost Cap

For 2012 rates, DCS initially established the total administrative cost cap for RTSPs at 20%. DCS uses the definition of administrative costs as set forth in the Indiana Code (465 IAC 2-16) and DCS gives full consideration to the costs and activities included in its definition of administrative costs in establishing its administrative cost caps.

Based upon this method, DCS is confident that at acceptable levels of occupancy, providers can operate in a fiscally sound fashion with this administrative cap.

RTSPs have argued that the allocation of 6.34% of direct care staff assigned to the cost study silo to administrative expenses by the RMTS unfairly penalizes providers. While the 6.34% represents administrative activities as defined by Title IV-E and were fully considered by DCS in establishing the administrative cost cap, DCS granted relief to residential providers in 2012 to ensure that direct care staff as required by DCS licensing rules are fully reimbursed to providers and not subjected to administrative cost caps.

After reviewing all residential cost reports submitted to DCS for 2012 rates, it has been determined that the 6.34% of costs associated with staff assigned to the RMTS represents 3.2% of total direct costs. Hence, an increase of 3.2 percentage points in the administrative cost cap for 2012 ensured that costs assigned to the time study silo are not unreasonably subjected to the administrative cost cap.

Therefore, for 2012 rates, DCS increased the administrative cost cap from 20.0% to 23.2%.



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Exhibit A

For 2013 rates, DCS modified its calculation of the administrative cap to remove the RMTS allocation of direct care costs from total administration costs and added those cost to direct operating expense. See the example below.

Assumptions:

Total administrative costs as reported before RMTS allocation = \$100,000
 Total direct operating costs as reported before RMTS allocation = \$600,000
 RMTS allocation of direct care costs to administrative expenses = \$20,000

2012 Rate Setting Methodology:

$$\text{Calculated administrative cost ratio} = (\$100,000 + \$20,000) / (\$600,000 - \$20,000) = 20.7\%$$

This ratio of 20.7% was compared to the administrative cost cap in establishing the disallowance of administrative costs in excess of the cap.

2013 Rate Setting Methodology:

$$\text{Calculated administrative cost ratio} = (\$100,000) / (\$600,000) = 16.7\%$$

This ratio of 16.7% was compared to the administrative cost cap in establishing the disallowance of administrative costs in excess of the cap.

This change in methodology resulted in a decrease in all providers' administrative expense rates. As a result of this change in calculation and the settlement discussions between DCS and IARCCA which sought to provide limited administrative cap relief to RTSPs, DCS adjusted the administrative cost cap for 2013 rates to 20.1%. The anticipated effect of this adjustment is to reduce disallowances for 2013 administrative cap costs by an estimated \$513,920.

2) Direct Care Staffing Cap

For 2013, DCS revised the direct care staffing caps as follows:

<u>License Category</u>	<u>2013 Cap</u>	<u>2012 Cap</u>
Group Home	4.6:1	5.9:1
Group Home ESC	3.5:1	4.9:1
CCI	4.6:1	4.9:1
CCI ESC	2.9:1	3.3:1
Private Secure	2.9:1	3.3:1
DD Programs	2.2:1	2.2:1
SMY Programs	3.0:1	3.0:1
Teen Mom – CCI	3.3:1	3.3:1
Teen Mom – Group Home	3.3:1	3.3:1
Staff Secure	2.9:1	4.9:1



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Exhibit A

The above represent the ratio of the average minimum number of children to each direct care staff over the course of the year.

3) Fringe Benefit Cap

In the context of settlement discussions and in its discretion pursuant to rule, DCS established a fringe benefit cap of 35%. This 2013 cap is 8.85 percentage points above the median fringe benefit rate of 26.15% for all LCPAs and residential providers in Indiana.

4) Utilization Cap

DCS defines excess capacity as where the provider's actual average annual occupancy rate, as provided for in the provider's cost report, is less than the minimum acceptable average annual occupancy rate as determined by the department. Occupancy costs associated with unused capacity as defined by the department will be disallowed. Excess capacity is defined as the difference between the provider's actual average annual occupancy rate for a given program and the minimum acceptable average occupancy rate for the provider's particular program as defined by the department.

The utilization cap remains unchanged for 2013, utilizing 80% as the minimum average occupancy.

5) Cost of Living Adjustment

A review of Bureau of Labor statistics over the past year and a half for various types of job categories yielded an annual weighted average cost increase of 0.30% utilizing the same job categories as in 2012.

Furthermore, in 2013, DCS will factor in non-labor costs, utilizing the Midwest CPI, yielding the following calculation:

	<u>Mix</u>	<u>Cost Index</u>	<u>Weighted Average</u>
Labor	80%	0.30%	0.24%
Non-Labor	20%	3.22%	0.64%
Cola Adjustment			0.88%

DCS will apply a 0.88% cost of living adjustment to 2013 rates.

6) Profit Margin (for for-profit organizations only)

For 2013 rates, the allowable profit margin for for-profit organizations remains unchanged at 7.47%



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Exhibit A

7) Recap of 2013 RTSP Rates vs. 2012 in the Context of Settlement Discussions

	Disallowances		
	Pre-Settlement	Post-Settlement	Change
<u>Fringe Cap</u>			
RTSP (27% / 35%)	\$3,785,271	\$890,639	(\$2,894,632)
<u>Admin Cap</u>			
RTSP (20% / 20.1%)	\$11,791,561	\$11,277,641	(\$513,920)



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Exhibit A

EXHIBIT B



Mitchell E. Daniels, Jr., Governor
John P. Ryan, Director

Indiana Department of Child Services
Room E306 – MS47
302 W. Washington Street
Indianapolis, Indiana 46204-2738

317-234-KIDS
FAX: 317-232-4497

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PROVIDER MANUAL: CHILD PLACING AGENCY RATES BULLETIN 2012-3

November 21, 2012

COST CAPS FOR 2013 RATES – LCPAS

Pursuant to rule found at 465 IAC 2-17 DCS annually sets cost-based rates for LCPAs. This annual rate setting is done pursuant to the methods stated in the rule. As a result of settlement negotiations between DCS and IARCCA regarding the current IARCCA lawsuit regarding 2012 rate setting, DCS has opted to make certain adjustments to various ratios and caps for 2013. The following describes those adjustments and the anticipated effects of those adjustments.

1) Administrative Cost Cap

For 2012 rates, DCS initially established the total administrative cost cap for LCPA providers at 95%, the median administrative cost rate for all LCPAs in Indiana. DCS uses the definition of administrative costs as set forth in the Indiana Code (465 IAC 2-16) and gives full consideration to the costs and activities included in its definition of administrative costs in establishing the administrative cost caps. Based upon this method, DCS is confident that with acceptable volume of placement, LCPA providers can operate in a fiscally sound fashion with this administrative cap.

However, IARCCA, on behalf of LCPAs has contended that the allocation of 20.52% of case management staff assigned to the cost study silo to administrative expenses by the RMTS unfairly penalizes providers. DCS and IARCCA have discussed this issue and the general issue of administrative cost cap relief in the context of ongoing settlement of IARCCA's legal action against DCS regarding 2012 rates.

To achieve this relief for 2013 rates, DCS modified its calculation of the administrative cap to remove the RMTS allocation of case management costs from total administration costs and added those costs to direct operating expense. See the example below.

Assumptions:

Total administrative costs as reported before RMTS allocation = \$200,000
Total direct operating costs as reported before RMTS allocation = \$600,000
RMTS allocation of direct care costs to administrative expenses = \$50,000

2012 Rate Setting Methodology: Protecting our children, families and future



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Exhibit B

Calculated administrative cost ratio = $(\$200,000 + \$50,000) / (\$600,000 - \$50,000)$
= 45.5%

This ratio of 45.5% was compared to the administrative cost cap in establishing the disallowance of administrative costs in excess of the cap.

2013 Rate Setting Methodology:

Calculated administrative cost ratio = $(\$200,000) / (\$600,000)$
= 33.3%

This ratio of 33.3% was compared to the administrative cost cap in establishing the disallowance of administrative costs in excess of the cap.

This change in calculation significantly reduced LCPA administrative cost rates.

Because it is not possible to accurately estimate the elimination of the RMTS allocation on 2013 rates DCS, working with IARCCA, sought to target complete LCPA administrative cap relief for 2013 via the settlement discussions. Pursuant to these settlement discussions, for 2013 rates, DCS established the administrative cost cap for LCPAs at 125.0%, 63.56 percentage points above the median administrative cost rate of 61.44% for all LCPAs.

2) Caseload Cap

For 2013 rates, the LCPA caseload cap will remain at 6.9:1.

DCS licensing rules have established acceptable caseload ratios ranging from 8.0:1 to 12.0:1. The minimum ratio of 8.0:1 anticipates is predicated on a caseload of foster children with a high level of needs. DCS has established its caseload cap at a caseload below 8.0:1, the lower end of the range.

3) Fringe Benefit Cap

In the context of settlement discussions and in its discretion pursuant to rule, DCS established a fringe benefit cap of 35%. This 2013 cap is 8.85 percentage points above the median fringe benefit rate of 26.15% for all LCPAs and residential providers in Indiana.

4) Cost of Living Adjustment

A review of Bureau of Labor statistics over the past year and a half for various types of job categories yielded an annual weighted average cost increase of 0.30% utilizing the same job categories as in 2012.

Furthermore, in 2013, DCS will factor in non-labor costs, utilizing the Midwest CPI, yielding the following calculation:



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Exhibit B

	<u>Mix</u>	<u>Cost Index</u>	<u>Weighted Average</u>
Labor	85%	0.31%	0.26%
Non-Labor	15%	3.22%	0.48%
Cola Adjustment			0.75%

DCS will apply a 0.75% cost of living adjustment to 2013 rates.

5) Profit Margin (for for-profit organizations only)

For 2013 rates, the allowable profit margin for for-profit organizations remains unchanged at 7.47%

6) Recap of 2013 LCPA Rates vs. 2012 in Context of Settlement Agreement

Disallowances

	Pre-Settlement	Post-Settlement	Change
Fringe Cap LCPA (27% / 35%)	\$431,040	\$27,715	(\$403,325)
Admin Cap LCPA (64% / 125%)	\$1,653,292	\$31,230	(\$1,622,062)



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Exhibit B

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

C.H., *et al.*,)
)
Plaintiffs,)

vs.)

No. 1:09-cv-1574-SEB-MJD

JOHN P. RYAN, in his official)
Capacity as Director of the)
Indiana Department of Child Services,)
)
Defendant.)

THE INDIANA ASSOCIATION OF)
RESIDENTIAL CHILD CARE)
AGENCIES, INC., d/b/a IARCCA,)
An Association of Children and Family)
Services ("IARCCA"),)

Plaintiff,)

*Formerly, 1:09-cv-1580 WTL-DML
(Consolidated with 1:09-cv-1574 for
pretrial purposes only)*

THE INDIANA DEPARTMENT OF)
CHILD SERVICES and)
JOHN P. RYAN, director, in his)
official capacity,)

Defendants.)

STIPULATION OF DISMISSAL

The parties, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A), hereby stipulate to the dismissal of this case with prejudice. Each party is to bear its own attorneys' fees and costs.

Exhibit C

Respectfully submitted,

/s/ Jon Laramore

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April E. Sellers
Anne Ricchiuto
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Exhibit C