

Exhibit A

Proposed Rule

LSA Document #10-416

DIGEST

Adds [465 IAC 2-16](#), concerning residential treatment services providers licensed by the department as child caring institutions under [IC 31-27-3](#), group homes under [IC 31-27-5](#), and private secure facilities under [465 IAC 2-11](#), to establish the mechanisms the department will use for setting maintenance payments, administrative payments, and payments for other costs and services that may be made to residential treatment services providers. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

465 IAC 2-16

SECTION 1. [465 IAC 2-16](#) IS ADDED TO READ AS FOLLOWS:

Rule 16. Rate Setting for Residential Treatment Services Providers

465 IAC 2-16-1 Scope and purpose

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 1. (a) Every residential treatment services provider in the state of Indiana must be licensed by the department in accordance with state law in order for the department to recommend placement of a child with a residential treatment services provider or pay for the costs of such placement.

(b) This rule establishes the procedures the department will use for setting the payment rates, including, but not limited to, maintenance payments, administrative payments, and other costs described in this rule, and that will be paid to residential treatment

services providers for children placed by the department or a probation department.

(Department of Child Services; [465 IAC 2-16-1](#))

465 IAC 2-16-2 Applicability of definitions

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 2. The definitions in sections 3 through 14 of this rule apply throughout this rule.

(Department of Child Services; [465 IAC 2-16-2](#))

465 IAC 2-16-3 "Administrative payment" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 3. "Administrative payment" means the payment for reasonable costs related to administration of the residential treatment services providers. The administrative payment for residential treatment services providers shall cover the following reasonable costs, including, but not limited to:

- (1) Case work.**
- (2) Case management.**
- (3) General administration and management.**
- (4) Accounting and finance.**
- (5) Human resources.**
- (6) Management information systems.**
- (7) Quality assurance procedures.**
- (8) Legal expenses, other than fees and costs related to certain litigation.**
- (9) Office supplies.**
- (10) Professional fees and dues.**
- (11) Subscriptions.**
- (12) Printing and postage.**
- (13) Medical examinations required as a condition of employment.**
- (14) A reasonable profit margin for residential treatment services providers that are not tax-exempt entities.**

(15) Independent living services as specified in written agreements with residential treatment service providers.
(Department of Child Services; [465 IAC 2-16-3](#))

465 IAC 2-16-4 "Base rate" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 4. "Base rate" will include the following components:

- (1) Maintenance payment.**
- (2) Administrative payment.**
- (3) Payment for costs that are not eligible for Title IV-E reimbursement, if such costs are related to licensing requirements as established by [465 IAC 2-9](#) through [465 IAC 2-13](#), as amended, or written agreement between the department and residential treatment service providers. .. Such costs shall include, but are not limited to:
 - (A) on-site nursing staff; or**
 - (B) transportation to medical appointments for the child.****

(Department of Child Services; [465 IAC 2-16-4](#))

465 IAC 2-16-5 "Cost report" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 6. (a) "Cost report" means a report that the department requires each residential treatment services provider to complete for each residential program that the residential treatment services provider operates.

(b) The cost report shall include the following:

- (1) Actual costs incurred by or on behalf of the program in the most recently completed residential treatment services provider fiscal year, or in an alternative twelve (12) month period as specified by the department.**
- (2) Any other information relating to determination of the cost of operating or supervising the program that is specified by the department, or that the residential treatment services provider**

considers relevant to determination of its reasonable administrative costs relating to the program, consistent with the applicable provisions of this rule.

(Department of Child Services; [465 IAC 2-16-5](#))

465 IAC 2-16-6 "Department" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-1-1](#); [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 6. "Department" means the Indiana department of child services established by [IC 31-25-1-1](#).

(Department of Child Services; [465 IAC 2-16-6](#))

465 IAC 2-16-7 "Excess capacity" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 7. "Excess capacity" means, in cases where the actual average annual occupancy rate, as included in the cost report, is less than the minimum acceptable average annual occupancy rate as established annually by the department, for a particular residential treatment services provider or program, the difference between the:

- (1) actual average annual occupancy rate of the residential treatment services provider's program; and**
- (2) minimum acceptable average annual occupancy rate of the residential treatment services provider's program as established annually by the department.**

(Department of Child Services; [465 IAC 2-16-7](#))

465 IAC 2-16-8 "Maintenance payment" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#); [IC 31-40-1-2](#)

Sec. 8. "Maintenance payment" means a payment to a residential treatment services provider to cover the reasonable cost of, and the reasonable cost of providing, the following items, on behalf of a child placed with the residential treatment services provider for whom the department is responsible for payment:

- (1) Food.**
- (2) Clothing.**
- (3) Shelter, including reasonable occupancy costs.**
- (4) Daily supervision.**
- (5) School supplies.**
- (6) Personal incidentals for the child.**
- (7) Liability insurance with respect to a child placed in the residential treatment services provider's facility.**
- (8) Reasonable travel expenses for the child to attend school where the child was enrolled before placement, to the extent that school transportation is not provided or required to be provided under applicable Indiana law by a public school corporation or other state or local agency.**
- (9) Reasonable travel expenses for the child for family visitation to the extent required by, or consistent with, the child's individual case plan or court order.**

(Department of Child Services; [465 IAC 2-16-8](#))

465 IAC 2-16-9 "Tax exempt entity" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 9. "Tax exempt entity" means a residential treatment services provider that has been determined to be exempt from federal income taxation by the Internal Revenue Service or otherwise operates under such an exemption pursuant to the Internal Revenue Code of 1986, as amended.

(Department of Child Services; [465 IAC 2-16-9](#))

465 IAC 2-16-10 "Occupancy costs" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 10. "Occupancy costs" means facility related costs of a residential treatment services provider including, but not limited to, the following:

- (1) Depreciation.**
- (2) Interest.**
- (3) Rent.**
- (4) Utilities.**
- (5) Building repairs and maintenance.**
- (6) Property taxes.**
- (7) Property insurance.**

(Department of Child Services; [465 IAC 2-16-10](#))

465 IAC 2-17-11 "Probation department" defined

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6; IC 31-37

Sec. 11. "Probation department" means the office of a juvenile court in a county that is responsible for care and supervision of a child placed in an out-of-home placement by a dispositional decree under IC 31-37.

(Department of Child Services; [465 IAC 2-17-11](#))

465 IAC 2-16-12 "Public hearing" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 12. "Public hearing" means a hearing, open to the public, for the department to accept comments, suggestions, and feedback related to annual review of the payment rates as set by the mechanisms in this rule.

(Department of Child Services; [465 IAC 2-16-12](#))

465 IAC 2-16-13 "Reasonable costs" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 13. "Reasonable costs" mean costs of particular items payable by the department under this rule in amounts that the department determines to be reasonable and consistent with applicable guidelines as described in the following:

(1) 2 CFR Part 225 (OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments).

(2) 2 CFR Part 230 (OMB Circular A-122 Cost Principles for Non-Profit Organizations).

(3) 48 CFR Part 31 Section 201-3 (Determining Reasonableness).

(Department of Child Services; [465 IAC 2-16-13](#))

465 IAC 2-16-14 "Residential treatment services provider" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 14. "Residential treatment services provider" means a provider licensed by the department as a:

(1) child caring institution under [IC 31-27-3](#);

(2) group home under [IC 31-27-5](#); or

(3) private secure facility under [465 IAC 2-11](#).

(Department of Child Services; [465 IAC 2-16-14](#))

465 IAC 2-16-15 "Title IV-E" defined

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 15. "Title IV-E" means the following:

(1) Title IV-E of the Social Security Act as codified in 42 U.S.C. 671 et seq.

(2) Regulations of the U.S. Department of Health and Human Services, Administration on Children, Youth and Families (ACYF), applicable to Title IV-E of the Social Security Act, as codified in 45 CFR Part 1355 and 45 CFR Part 1356.

(3) Official interpretations of Title IV-E of the Social Security Act and applicable regulations by the federal administering agency, as

published in the Child Welfare Policy Manual issued by the Children's Bureau of the ACYF.

(Department of Child Services; [465 IAC 2-16-15](#))

465 IAC 2-16-16 Annual public comment period; public hearing

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 16. (a) An annual period of public comment will be open for at least thirty (30) days preceding an annual public hearing. The public comment process will allow residential treatment service providers and other interested persons or organizations to communicate ideas, suggestions, or other comments regarding the rate setting methodology in writing or via e-mail to the department at an address specified in notices posted by the department on its website.

(b) At least one (1) public hearing regarding the rate setting methodology will be held on an annual basis at an address specified in a notice posted by the department on the department's website. The department will send electronic notice to residential treatment service providers currently under contract with DCS.

(c) Notice of a public hearing will be posted on the department's website for a period of thirty (30) consecutive days immediately before the date scheduled for the public hearing.

(d) The department may, in addition to posting information on its website, provide public notice of the time and place of a scheduled public hearing through advertisement or publication in news media or posting in locations accessible to the public.

(Department of Child Services; [465 IAC 2-16-16](#))

465 IAC 2-16-17 Independent review of the rate setting methodology

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 17. An independent third party contractor will conduct an annual review of the department's rate setting methodology.

(Department of Child Services; [465 IAC 2-16-17](#))

465 IAC 2-16-18 Payments

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 18. The department will make payments to a residential treatment services provider at the time and in the manner specified in a written agreement that is in a form approved by the department and executed by the parties.

(Department of Child Services; [465 IAC 2-16-18](#))

465 IAC 2-16-19 Publishing of payments

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 19. The department will maintain and publish a list of all residential treatment services provider payment rate amounts.

(Department of Child Services; [465 IAC 2-16-19](#))

465 IAC 2-16-20 Allowable costs in the base rate and other cost based rates approved by the department; cost report required

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 20. (a) Each residential treatment services provider shall submit to the department a cost report on an annual basis at the time and in the form required by the department. Failure to submit

the cost report timely may result in delay in payment or nonpayment by the department for costs incurred or services rendered by the residential treatment services provider.

(b) Any payments made to a residential treatment services provider will be made pursuant to a written agreement that is in a form specified by the department and executed by the parties.

(c) The department will review each cost report for reasonableness and eligibility under Title IV-E, OMB circulars and the CFR. The department may, in its discretion, adjust historical costs to reflect current costs by applying a cost of living adjustment. Based on that review, the department will submit to the residential treatment services provider a final approved cost report that the department will use in calculating the applicable rates.

(d) To be allowable, a cost must relate to one (1) or more of the categories described in section 4 of this rule. The cost must also generally satisfy the following criteria:

(1) The cost is reasonable, necessary, and related to the care of children.

(2) The cost is related to goods or services actually provided by the residential treatment services provider.

(e) The department will mail to the residential treatment services provider a letter (rate letter) stating the base rate and other cost based rates that the department agrees to pay, for each applicable program for children whom the department has placed or may place with the residential treatment services provider. The rate letter will include the effective date of the new approved base rate and other cost based rates as approved by the department. The effective date will be not less than forty-five (45) days after the date of the letter.

(f) If the residential treatment services provider accepts the rate offered by the department in the rate letter, such rate shall amend any agreement containing payment rates for placements currently in effect between the residential treatment services provider and the department.

(g) Each cost report submitted under subsection (a) is subject to further review or audit by the department. Such a review or audit may result in a request for a rate adjustment as specified in a new

rate letter issued and mailed to the residential treatment services provider.

(h) If the residential treatment services provider has not been licensed, or operated a program for which a base rate or other cost based rate is required, for a period of at least twelve (12) months before the cost report is due to the department, the residential treatment services provider shall submit a cost report utilizing a comprehensive twelve (12) month operating budget for the new program at least ninety (90) days before the start of the program. The department will utilize its rate setting methodology as provided herein to establish a rate for the new program. The cost report shall be in the form specified or approved by the department.

(i) The department will make payments to each residential treatment services provider for reasonable costs of the residential treatment services provider, based on the base rate and other cost based rates approved by the department for that residential treatment services provider.

(Department of Child Services; [465 IAC 2-16-20](#))

465 IAC 2-16-21 Unallowable costs in the base rate and other cost based rates approved by the department

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 21. (a) Expenditures for the following services are ineligible costs under Title IV-E and are not to be included in the base rate:

- (1) Counseling.**
- (2) Therapy.**
- (3) Education (other than school supplies).**
- (4) Health and medical services or treatment.**

(b) Consistent with federal guidelines, the department will not pay residential treatment services providers for certain unallowable expenses and costs, as specified in subsections (c) and (d). These unallowable costs will not be considered by the department in calculating the base rate and other cost based rate approved by the department. The unallowable costs and expenses as listed in

subsections (c) and (d) must be paid with funds secured from a funding source other than the department.

(c) The following costs are unallowable:

(1) Fines and penalties resulting from violations of or failure of the organization to comply with federal, state, or local laws and regulations, except when incurred as a result of compliance with specific provisions of a contract with the department or instructions in writing from the department.

(2) Investment management counsel and staff and similar expenses incurred solely to enhance income from investments.

(3) Lobbying as defined in 2 CFR Part 230 (OMB Circular A-122 Cost Principles for Non-Profit Organizations).

(4) Organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions. A portion of administrative costs will be allocated to fundraising costs.

(5) Donations and contributions, including cash, property, and services made by the organization, regardless of the recipient.

(6) Donated goods or services received by the organization, except when donated services utilized in the performance of a direct cost activity are material in amount.

(7) Bad debts, including losses arising from uncollectible accounts and other claims, related collection costs, and related legal costs.

(8) Compensation and special benefits to owners in excess of amounts reasonable for the services rendered.

(9) Entertainment, including amusement, diversion, and social activities and any associated costs not directly related to reasonable entertainment and recreation for children placed with the residential treatment services provider by the department or a probation department, such as the following:

(A) Tickets to shows or sports events.

(B) Meals.

(C) Lodging.

(D) Rentals.

(E) Transportation.

(F) Gratuities.

(10) Alcoholic beverages.

(11) Litigation expenses and fees if the expenses and fees relate to a lawsuit or other legal proceeding:

(A) that:

(i) alleges a violation of, or failure to comply with, a federal, state, local, or foreign statute or regulation by the organization (including its agents and employees); and

(ii) results in:

(AA) a conviction in a criminal proceeding;

(BB) a determination of liability in a civil or administrative proceeding involving an allegation of fraud or similar misconduct;

(CC) the imposition of a monetary penalty in any civil or administrative proceeding;

(DD) the termination of the contract with the department;

by reason of a violation or failure to comply with a law or regulation, or a disposition by consent or compromise if the action could have resulted in any of the proceeding dispositions listed in this item;

(B) initiated by the residential treatment services provider against the department for:

(i) administrative or judicial review of any final rate, payment, child assessment, or child program placement determination made by the department;

(ii) interpretation or application of this rule, any other rule of the department, or any department policy;

(iii) alleged noncompliance by the department with any provision of Title IV-E or any other federal or state law, rule, or regulation; or

(iv) alleged breach of any contract between the department and the residential treatment services provider;

(C) naming as a party defendant any other federal or state governmental agency; or

(D) initiated by, or on behalf of, a child or a child's parent or legal guardian, against the residential treatment services provider, alleging a claim for damages, violation of a constitutional or statutory right, or any other basis for liability of the provider to the plaintiff or plaintiffs.

(12) Mortgage and loan principal payments.

(13) Contingency reserves or similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening.

(14) Advertising and marketing except those which relate to the core mission of the residential treatment services provider or are solely for the recruitment of personnel, the procurement of goods or services necessary to support the program, and other specific purposes necessary to meet the requirements of the department.

(15) Housing of nonclients, except as specifically authorized by the department in licensing rules as established by [465 IAC 2-9](#) through [465 IAC 2-13](#), as amended.

(16) Taxes from which exemptions are available to the residential treatment services provider directly, or which are available to the residential treatment services provider based on an exemption afforded by the federal government when the awarding agency makes available the necessary exemption certificates.

(17) Federal income taxes.

(18) Nonstraight line depreciation except where clear evidence indicates that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in later portions of its useful life.

(d) The following costs and expenses will be considered by the department to be unallowable costs on the cost report and will not be considered in calculating the administrative payment:

(1) Salaries: Amounts exceeding the maximum allowable variation established by the department from the median salary for the job category that is determined by the department using:

(A) most recent available Child Welfare League of America Salary Study published by CWLA Press, that contains a survey of applicable job category salaries; or

(B) applicable job category salaries paid by all residential treatment services providers in Indiana, as determined by reports compiled by, or available to, the department.

(2) Fringe benefits: Amounts exceeding the maximum allowable variation established by the department from the median fringe benefit rate (total fringe benefits as a percent of total wages) for all Indiana residential treatment services providers, as determined by reports compiled by, or available to, the department.

(3) Client to direct care staff ratios: Costs associated with staff in significant excess of licensing requirements as established by [465 IAC 2-9](#) through [465 IAC 2-13](#), as amended, or services

standards adopted by the department and incorporated in a written agreement with residential treatment services providers.

(4) **Direct care staff to supervisor ratios:** Costs associated with supervisory staff in significant excess of licensing requirements as established by [465 IAC 2-9](#) through [465 IAC 2-13](#), as amended, or services standards adopted by the department and incorporated in a written agreement with residential treatment services providers.

(5) **Indirect cost allocations:** Any indirect cost allocations as a percentage of total costs in excess of the maximum percentage of total costs established by the department for allowable indirect costs.

(6) **Total administrative costs:** Any amount by which total administrative costs, as defined in the cost report, exceed a maximum percentage of total costs established by the department.

(7) **Occupancy costs associated with excess capacity** as defined in section 7 of this rule.

(Department of Child Services; [465 IAC 2-16-21](#))

[465 IAC 2-16-22](#) Offsetting revenue and netting

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 22. (a) Eligible cost reimbursement offsetting will be applied as a credit in accordance with federal regulations as identified by 2 CFR Part 230 (OMB Circular A-122 Cost Principles for Non-Profit Organizations). The resulting net cost will be used to establish the administrative payment.

(b) Applicable credits refer to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions include, but are not limited to, the following:

- (1) Purchase discounts.**
- (2) Rebates or allowances.**
- (3) Recoveries or indemnities on losses.**

(4) Insurance refunds.

(5) Adjustments of overpayments or erroneous charges.

To the extent that such credits accruing or received by the residential treatment services provider relate to allowable costs, they shall be credited to the department either as a cost reduction or cash refund, as appropriate.

(c) In some instances, the amounts received from the department to finance residential treatment services provider activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures will be applied by the department in determining the administrative payment.

(Department of Child Services; [465 IAC 2-16-22](#))

465 IAC 2-16-23 Behavioral health

Authority: [IC 31-25-2-18](#)

Affected: [IC 12-15-21](#); [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 23. (a) Counseling, therapy, skill building, behavioral health management, and other behavioral health services to meet the behavioral healthcare needs of the child will be provided upon authorization from the department.

(b) Effective no earlier than January 1, 2012, for children who are Medicaid eligible, behavioral health costs shall be billed to:

(1) Medicaid, for services authorized by the department that are Medicaid eligible; and

(2) the department through a contract with the department for services authorized by the department that are not covered by Medicaid.

(c) If subsection (b) does not apply and if private insurance is not available or does not cover the costs of services or treatment, behavioral health costs shall be billed to the department through a contract with the department for services authorized by the department.

(Department of Child Services; [465 IAC 2-16-23](#))

465 IAC 2-16-24 Education

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 24. (a) Educational services may be provided directly by the residential treatment services provider upon authorization from the department.

(b) The residential treatment services provider must submit educational services cost information with the cost report or as such information is reasonably requested by the department. Any payments made by the department for educational services that are provided directly by a residential treatment services provider to a child placed with that residential treatment services provider shall be based on the reasonable costs contained in the residential treatment services provider's cost report.

(Department of Child Services; [465 IAC 2-16-24](#))

465 IAC 2-16-25 Health and medical services or treatment

Authority: [IC 31-25-2-18](#)

Affected: [IC 12-15-21](#); [IC 31-25-2-7](#); [IC 31-27-6](#)

Sec. 25. The department will pay for health and medical services or treatment including prescription medication, directly to the service provider on behalf of children within the department or probation's system of care who are placed with a residential treatment services provider if:

(1) Medicaid denies a claim, or

(2) the child is not Medicaid eligible and private insurance is not available or does not cover the costs of services or treatment.

(Department of Child Services; [465 IAC 2-16-25](#))

465 IAC 2-16-26 Review of rates

Authority: [IC 31-25-2-18](#)

Affected: [IC 31-25-2-7](#); [IC 31-27-3](#); [IC 31-27-5](#)

Sec. 26. (a) Residential treatment services providers may request a review of a base rate and other cost based rates approved by the department as stated in a rate letter issued in accordance with section 20(e) and (g) of this rule. A residential treatment services provider may request a review of the base rate and other cost based rates when it believes that:

- (1) errors have been made in the:**
 - (A) cost report submitted to the department under section 20(a) of this rule;**
 - (B) calculation of the rate; or**
 - (C) determination of the reasonableness of any cost; or**
- (2) the determination of the rate by the department has a material adverse impact on child welfare in Indiana that an existing provider in the state of Indiana cannot adequately address.**

(b) A request for review of any part of the base rate or other cost based rate approved by the department must be submitted in writing to the department within thirty (30) days after the department mails the notice letter to the residential treatment services provider pursuant to section 20(e) and (g) of this rule. The time limit for submitting a request for review under this section will be determined under the applicable provisions of IC 4-21.5-3-1 and IC 4-21.5-3-2.

(c) The request for review of the base rate or other cost based rate approved by the department shall be submitted in the form and manner specified by the department and shall include, but not be limited to, the following items:

- (1) Identification of the current rate and approved new rate, as applicable to a specific program or service offered by the residential treatment services provider.**
- (2) An itemized statement of administrative and indirect costs that the residential treatment services provider considers allowable under the provisions of this rule.**
- (3) A clear, concise statement of the reasons for the requested change.**
- (4) A detailed statement of related information in support of the requested change.**

The department will not accept or process an incomplete request for review of the base rate or other cost based rate approved by the department that does not include at least the items specified in this subsection.

(d) No request for review of the base rate or other cost based rate approved by the department will be acted upon if the residential treatment services provider has a current license that is in the process of being revoked by the department.

(e) The department will conduct a review and send notice of its decision to the residential treatment services providers within thirty (30) days of receiving the request for review under this section.

(Department of Child Services; [465 IAC 2-16-26](#))

465 IAC 2-17-27 Appeal of the rates

Authority: IC 31-25-2-18

Affected: IC 4-21.5-3; IC 31-25-2-7; IC 31-27-6

Sec. 27. (a) A residential treatment services provider may request an appeal of the department administrative review decision under section 26 of this rule by submitting a written request within fifteen (15) days of receipt of the notice specified in section 26(e) of this rule for appeal under the applicable provisions of IC 4-21.5-3-7(a).

(b) Except as otherwise provided in this section, all provisions of IC 4-21.5-3 apply to appeals requested under subsection (a).

(c) The following provisions of IC 4-21.5-3 do not apply to appeals under this section:

(1) IC 4-21.5-3-4.

(2) IC 4-21.5-3-6.

(3) IC 4-21.5-3-8, relating to sanctions and temporary orders.

(4) IC 4-21.5-3-14(c), relating to burden of proof.

(d) The general counsel of the department will designate administrative law judges for purposes of appeals under this section.

(e) In any appeal under this section the residential treatment services provider has the burden of proof and the burden of persuasion to establish, by a preponderance of the evidence, that the department's decision following the administrative review is erroneous, based on a reason specified in section 26(a) of this rule.

(f) Unless a continuance is granted under subsection (g), the assigned administrative law judge will hold an administrative hearing not more than sixty (60) days after the department receives the written request. Unless a continuance is granted as provided in this section, hearings will be scheduled and held in the order in which the appeals are assigned to the administrative law judge, taking into consideration administrative hearings requested in other pending matters and any applicable deadlines established by law or rule.

(g) The administrative law judge may grant a continuance of the date for a hearing scheduled in accordance with subsection (f), for any of the following reasons:

- (1) The petitioner files a written motion for continuance specifying the reasons for the request and alternate dates when the petitioner will be available and prepared to go forward with the hearing.**
- (2) The department files a written motion for continuance for good cause, determined under subsection (h).**
- (3) The administrative law judge orders a continuance for good cause, determined under subsection (i).**

(h) The following shall constitute good cause for granting a continuance of a scheduled hearing date requested by the department:

- (1) A necessary witness, or the counsel or other necessary representative of the department, is or will be unavailable on the scheduled hearing date, for a reason or reasons that could not have been anticipated at the time the hearing was scheduled.**

(2) A motion or other proceeding relating to the appeal is pending that could be dispositive of the appeal, or otherwise materially affect the course or conduct of the hearing.

(3) Any other good cause, as determined by the administrative law judge at a prehearing conference on the motion for continuance.

(i) The following shall constitute good cause for granting a continuance of a scheduled hearing date on motion of the administrative law judge:

(1) Unanticipated congestion of the hearing calendar of the assigned administrative law judge.

(2) Unavailability of the assigned administrative law judge due to unforeseen circumstances, or a change in the judge assigned to the appeal for a reason consistent with any provision of IC 4-21.5-3.

(3) Any other good cause, as determined by the general counsel of the department or the general counsel's designee.

A continuance under this subsection shall be granted by a written order stating the reason or reasons for the continuance and entered in the record of the proceedings.

(j) If a hearing continuance is granted under subsection (g) the administrative law judge shall promptly schedule and conduct a prehearing conference under IC 4-21.5-3-18 to address the rescheduling of the hearing and any other matters relating to expediting decision of the appeal or otherwise resolving the issues presented.

(k) The administrative law judge may, with the consent of the parties, consolidate two (2) or more pending appeals that involve the same or substantially similar facts or issues, for purposes of a hearing and decision under this section.

(l) Unless an extension of time is granted by the general counsel of the department for good cause stated on the record, an

administrative law judge will issue a decision within ninety (90) days after completion of the hearing.

(m) Under IC 4-21.5-3-34 and IC 4-21.5-3-35, the department may by policy provide additional procedures to facilitate the expeditious conduct and disposition of administrative appeals under this section, or informal settlement of matters that are the subject of administrative appeals, not inconsistent with the provisions of this rule and applicable provisions of IC 4-21.5-3. A copy of any written policies or procedures relating to administrative appeals to which this section applies will be provided to each party or designated representative upon receipt of an appeal submitted under this section.

(Department of Child services; 465 IAC 2-17-29)

465 IAC 2-17-28 Rate in effect during pendency of review and appeal of rates

Authority: IC 31-25-2-18

Affected: IC 31-25-2-7; IC 31-27-6

Sec. 28. (a) The department will pay, during the time the rate is being reviewed or appealed, the amount stated in the most recent rate letter that was mailed to the residential treatment services provider in accordance with Section 20(e) or (g).

(b) Any payments made by the department or received by the residential treatment services provider after the effective date in the notice letter mailed to the residential treatment services provider in accordance with Section 20(e) or (g) will be adjusted in accordance with the final approved rate following completion of the administrative review under section 26 of this rule and any administrative appeal under section 27 of this rule, retroactive to the effective date of the notice letter.

(Department of Child services; 465 IAC 2-17-28)

Section 2. The payment amounts determined under this rule shall take effect no earlier than January 1, 2012.