



Michael R. Pence, Governor  
State of Indiana

*Office of General Counsel*  
402 W. WASHINGTON STREET, ROOM W451, MS27  
INDIANAPOLIS, IN 46204-2744

## REQUEST FOR RULEMAKING AND FAMILY IMPACT CERTIFICATION

### PURPOSE FOR RULE

- The proposed rule adds a new rule to the Indiana Administrative Code to update and streamline existing Medicaid program integrity regulations.
- The proposed rule repeals administrative rules, that are outdated, repeated in other sections or do not adequately address existing compliance issues.
- The proposed rule will also address deficiencies identified by the Centers for Medicare and Medicaid Services.

### REQUESTED RESPONSE TIME

FSSA anticipates an effective date for this rule of October 1, 2016. Given this effective date, FSSA respectfully requests a response to this submission on or before **October 30, 2015**.

Thank you for your attention to this matter. Should you have any questions regarding this submission, please feel free to contact me at (317) 232-1244 or [kim.crawford@fssa.in.gov](mailto:kim.crawford@fssa.in.gov).

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*Indiana Family and Social Services Administration*  
402 W. WASHINGTON STREET, P.O. BOX 7083  
INDIANAPOLIS, IN 46207-7083

TO: Micah Vincent, Director  
Office of Management and Budget

FROM: John J. Wernert, M.D.; Secretary, FSSA

RE: Request to proceed with rulemaking – program integrity rule

DATE: September 11, 2015

CC: Brandon Shirley, Scott Gartenman, Shane Hatchett, Jim Waddick

The Office of the Secretary of Family and Social Services (“Office”) on behalf of the Office of Medicaid Policy and Planning intends to amend the administrative code to update and streamline its program integrity rules. Pursuant to Executive Order 13-3 and Financial Management Circular 2013-01, the Office submits this justification and asks that the Office of Management and Budget (“OMB”) Director approve its request to proceed with rulemaking.

### **Background**

The proposed rule adds a new rule to the administrative code that updates and streamlines existing Medicaid program integrity regulations. In order to monitor and protect the fiscal integrity of the Medicaid program, the Office relies on a number of authorities and processes outlined in State and Federal law and administrative rules. However, the Office’s existing administrative rules are either outdated, repeated in other sections, or do not adequately address existing compliance issues. The Office seeks to add an overarching rule section that contains new and updated program integrity rules and authorities, and repeals the sections they replace. The Office feels this approach will provide better functionality and service to our providers, contractors, and federal partners. Concurrent with this update, the Office is incorporating changes to the program integrity rules to address deficiencies identified by the Centers for Medicare and Medicaid Services.

### **Waste, fraud, or abuse exception**

Section 6.e. of Executive Order 13-3 excepts any “rules to address matters pertaining to the control, mitigation or eradication of waste, fraud, or abuse within a state agency, or wasteful or abusive practices perpetrated against a state agency.” The purpose of the proposed rule is to update the Office’s existing enforcement authorities in order to address more modern compliance issues related to fraud and abuse perpetrated against the Office. For instance, the Office



proposes to include a section that outlines the process and duration for excluding a Medicaid provider from participating in the program due to improper or abusive conduct against the Medicaid program. Other sections define the process for suspending Medicaid payments to a Medicaid provider due to a credible allegation of fraud determination. The proposed rule also updates authorities relating to audits and overpayment findings. We believe that the proposed rule meets the requirements for this exception.

Accordingly, our office believes that the proposed rule meets the foregoing exception to the rulemaking moratorium and asks that the OMB Director approve the Office's request to proceed with the rulemaking. Should the OMB Director wish to discuss this proposed rule further before making any decision, we would be happy to make a subject matter expert available at the Director's convenience.

Office of the Secretary of Family and  
Social Services

A handwritten signature in black ink, appearing to read "John J. Wernert, M.D.", written over a horizontal line.

John J. Wernert, M.D.  
Secretary



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## **FSSA's Family Impact Statement for Proposed Rule – Program Integrity rule**

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Executive Order 13-05 (the "Order") requires the Family and Social Services Administration ("FSSA") to assess a policy or proposed rule's impact on family formation and general well-being and to certify its compliance with the Order. The FSSA hereby submits this certification that it has assessed the proposed rule's impact on family formation and general well-being based on the enumerated considerations listed in the Order.

### **Background and summary of the rule**

The Office of the Secretary of Family and Social Services ("Office") administers and monitors Medicaid through the Office of Medicaid Policy and Planning and the Program Integrity Unit. As the single state Medicaid agency and rulemaking authority, the Office proposes a new rule to add administrative code that updates and streamlines existing Medicaid program integrity regulations. In order to monitor and protect the fiscal integrity of the Medicaid program, the Office relies on a number of authorities and processes outlined in State and Federal law and administrative rules. However, the Office's existing administrative rules are either outdated, repeated in other sections, or do not adequately address existing compliance issues. The Office seeks to add an overarching rule section that contains new and updated program integrity rules and authorities, and repeals the sections they replace. The Office feels this approach will provide better functionality and service to our providers, contractors, and federal partners. Concurrent with this update, the Office is incorporating changes to the program integrity rules to address deficiencies identified by the Centers for Medicare and Medicaid Services.

FSSA has not yet scheduled a public hearing for this proposed rule. We will notify you of the public hearing once known if we have not yet received your approval.

### **Impact of the proposed rule on the family well-being or family formation**

FSSA assessed the proposed rule's impact on family formation and well-being in light of the six considerations enumerated in the Order. This rule only concerns the relationship between Medicaid providers and the FSSA. Accordingly, FSSA expects that the proposed rule will have a **neutral** impact on family well-being or family formation. FSSA's response to the enumerated measures is as follows:

**1) Whether or not this action by government strengthens or erodes the stability of the family and the marital commitment.**

Response: the proposed rule gives the Office authority to regulate Medicaid providers and protect the program's fiscal integrity. The Office's enforcement of these authorities is a matter between the Medicaid provider subject to the action and the Office. It does not concern individual recipient members or their families. Therefore, the proposed rule neither strengthens nor erodes the stability of the marital commitment.



2) **Whether or not this action encourages or discourages non-marital childbearing.**

Response: the proposed rule gives the Office authority to regulate Medicaid providers and protect the program's fiscal integrity. The Office's enforcement of these authorities is a matter between the Medicaid provider subject to the action and the Office. It does not concern individual recipient members or their families. Therefore, the proposed rule neither encourages nor discourages non-marital childbearing.

3) **Whether or not this action respects or inhibits the rights of parents to raise their children and make the best choices about their children's education, health, and well-being.**

Response: the proposed rule gives the Office authority to regulate Medicaid providers and protect the program's fiscal integrity. The Office's enforcement of these authorities is a matter between the Medicaid provider subject to the action and the Office. It does not concern individual recipient members or their families. Therefore, the proposed rule does not inhibit the rights of parents to raise their children and make parental choices.

4) **Whether or not this action increases or decreases private family earnings or the incentive for parents to provide materially and emotionally for their children.**

Response: the proposed rule gives the Office authority to regulate Medicaid providers and protect the program's fiscal integrity. The Office's enforcement of these authorities is a matter between the Medicaid provider subject to the action and the Office. It does not concern individual recipient members or their families. Therefore, the proposed rule does not decrease family earnings or negatively impact the incentive for parents to provide for their children.

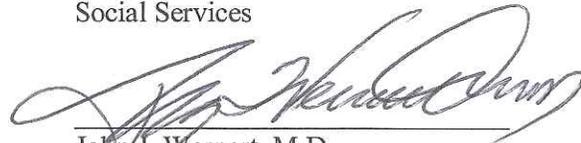
5) **What message, intended or otherwise, does this program send to the public concerning the status of the family?**

Response: the proposed rule gives the Office authority to regulate Medicaid providers and protect the program's fiscal integrity. The Office's enforcement of these authorities is a matter between the Medicaid provider subject to the action and the Office. It does not concern individual recipient members or their families. Therefore, the proposed rule does not send any message, positive or negative, concerning the status of the family.

6) **What message does the action send to children about the relationship between their present choices and their future well-being?**

Response: the proposed rule gives the Office authority to regulate Medicaid providers and protect the program's fiscal integrity. The Office's enforcement of these authorities is a matter between the Medicaid provider subject to the action and the Office. It does not concern individual recipient members or their families. The proposed rule does not send any negative message about a child's present choices and future well-being.

Office of the Secretary of Family and  
Social Services



John J. Wernert, M.D.  
Secretary



## Family Impact Assessment

### Documentation of new Policies and Rules

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#### Pursuant to Section 2(a)-(f) of Executive Order 13-05:

In formulating and implementing policies and rules that may have a significant impact on family formation and general well-being, the agencies listed in Section 1 of Executive Order 13-05 shall assess such measures in light of the following considerations:

- 1) **Whether or not this action by government strengthens or erodes the stability of the family and the marital commitment.**
- 2) **Whether or not this action encourages or discourages non-marital childbearing.**
- 3) **Whether or not this action respects or inhibits the rights of parents to raise their children and make the best choices about their children's education, health, and well-being.**
- 4) **Whether or not this action increases or decreases private family earnings or the incentive for parents to provide materially and emotionally for their children.**
- 5) **What message, intended or otherwise, does this program send to the public concerning the status of the family?**
- 6) **What message does the action send to children about the relationship between their present choices and their future well-being?**

These assessments should be answered on a separate document attached to this submission form and clearly marked as answers to considerations 1-6. If an agency does not think that a consideration applies to their proposal, the agency must include an explanation of why the consideration does not apply. Additionally, if the proposal contains a potentially negative impact on family well-being or family formation, the agency must include an explanation of why the proposal is necessary.

This submission form and the agency assessments should be submitted simultaneously with the proposed policy or rule to the Office of Management and Budget.

By signing below, the agency head certifies that they are aware of the Family Impact Assessment, and all information submitted is accurate to the best of their knowledge.

John J. Wernert, M.D., Secretary

9/28/15  
Date

FSSA  
Agency