

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

C.H., <i>et al</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	No. 1:09-cv-1574-SEB-JMS
)	
JAMES W. PAYNE, in his official capacity)	
as Director of the Indiana Department of)	
Child Services,)	
)	
Defendant.)	
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)	
THE INDIANA ASSOCIATION OF)	
RESIDENTIAL CHILD CARE)	
AGENCIES, INC. d/b/a IARCCA,)	
an Association of Children and Family)	
Services ("IARCCA"),)	
)	
Plaintiff,)	<i>Formerly, 1:09-cv-1580 WTL-DML</i>
)	<i>(Consolidated with 1:09-cv-1574 for</i>
vs.)	<i>pretrial purposes only)</i>
)	
THE INDIANA DEPARTMENT OF)	
CHILD SERVICES and JAMES W.)	
PAYNE, director, in his official capacity,)	
)	
Defendants.)	

NOTICE OF INTENT TO RE-OPEN LITIGATION AND REQUEST FOR HEARING

The Plaintiff, the Indiana Association of Residential Child Care Agencies, Inc. ("IARCCA"), respectfully notifies the Court of its intent to seek injunctive relief and requests that the Court set a hearing, and further states as follows:

Procedural Background

1. IARCCA initiated this action in December 2009 against the Indiana Department of Child Services ("DCS") and James W. Payne ("Payne"), in his official capacity as director of DCS, after DCS announced that it was cutting the rates that DCS pays to the agencies (the "Providers") that provide treatment to abused, neglected and delinquent Indiana children and their families. IARCCA contended that the rate cuts were arbitrary and unlawful.

2. After this Court granted a preliminary injunction, the parties entered into a settlement agreement in March 2011 for the resolution of all claims in the case. A true and accurate copy of the settlement agreement is attached hereto as Exhibit A.

3. The settlement agreement required DCS to promulgate certain administrative rules and a provider manual to govern the setting of the rates that DCS pays to the Providers, and to issue rates consistent with those rules.

4. The settlement agreement also included agreement by the Providers to a 5% across-the-board rate cut with certain exceptions. Exceptions were for Providers being paid less than their IV-E claimable rates and Psychiatric Residential Treatment Facilities to be paid at the Medicaid rate.

5. Pursuant to the settlement agreement, the parties submitted, and the Court approved, an order dismissing the case without prejudice. (Dkt. 88) The stipulation of dismissal allowed for IARCCA to seek relief in this Court for "any breach of the settlement agreement between them, or any breach of applicable law ... without having to exhaust administrative remedies."

The New Rules & Rates

6. DCS filed the new rules on or about April 26, 2011 (for Residential Providers) and May 25, 2011 (for LCPA Providers). DCS sought, and the Providers submitted, cost reports on or about May 31, 2011. DCS published the provider manual on or about October 20, and at that same time published Bulletins that set caps on rates. A true and accurate copy of those Bulletins is attached hereto as Exhibit B.

7. On October 17, 2011, DCS issued letters to the Providers setting forth the rates that DCS would agree to pay beginning on January 1, 2012. A true and accurate copy of one such letter is attached hereto as Exhibit C.

8. The new rates announced by DCS represent drastic decreases to the amounts DCS has historically paid to reimburse Providers for the services they provide – in some cases, DCS intends to cut rates by more than 50%. The rate cuts for most Providers are significantly greater than the cuts this Court previously enjoined in January 2010.

9. DCS did not comply with the settlement agreement, its own new rules, or applicable law in developing the new rates.

10. For example, DCS has announced – outside of the rulemaking process – caps on the amount of administrative costs it will reimburse, as a percentage of all costs. And DCS has included as "administrative" costs several non-administrative functions, counting them against the cap. This action is unlawful because it is arbitrary and not authorized by law.

11. Similarly, the cost report format required that program management costs (including program directors, quality assurance, and case managers) be classified in the administrative column. These are program management costs that should not be subject to an “administrative” cap and lead to improperly low rates under DCS's own rules.

12. Making matters worse, at the time DCS required Providers to submit their cost reports, it had not published the provider manual, which it used to establish rates.

Therefore, the Providers were forced to categorize their anticipated costs without the benefit of the definitions and other guidance found in the provider manual. These actions by DCS are contrary to the settlement agreement and violate Indiana law.

13. Additionally, DCS is requiring Providers to incur certain costs, but is refusing to include them among reimbursable costs, such as a required number of visits with foster children and parents.

14. As a further example of DCS's violations, DCS is applying staff ratios in an unlawful manner. Licensing regulations (*see e.g.* 465 IAC 2-9-48, 465 IAC 2-10-48, 465 IAC 2-12-48, and 465 IAC 2-13-48) require that child-caring institutions and group homes “employ staff to perform administrative, supervisory, service, and direct care functions.” Yet despite this separation of supervisory staff from direct-case workers in DCS's own rules, DCS includes supervisors and case managers in the direct care staff ratio calculations in the new rates, in violation of the licensing provisions. In a few cases, during the same week a Provider's reimbursement for staff was cut, DCS licensing personnel informed that same Provider that it needed additional staff to comply with DCS licensing rules under which the Providers are required to operate.

15. Approximately 80 Providers who are IARCCA members have filed requests for administrative review with DCS, as provided for by the new rules.

16. DCS's responses to those requests are due on or about December 16, 2011.

17. Because of the ongoing administrative review process, IARCCA is not filing a motion for injunctive relief concurrently with this notice. It will not be until after the

conclusion of the administrative review process – December 16 – that IARCCA's members will know the full extent of their harm from the new rates. IARCCA will file as soon as possible, keeping in mind the need to give DCS appropriate time to respond to IARCCA's arguments.

Request For Hearing

18. If the new rates go into effect, the Providers will be unable to care adequately for Indiana's most vulnerable children, as required by state and federal law.

19. Assuming the parties are not able to reach any other resolution, IARCCA anticipates filing an amended and supplemental complaint, seeking injunctive relief to prevent the new rates from taking effect on January 1, 2012. IARCCA anticipates filing that complaint on or about December 7, 2011 and therefore requests that the Court set this matter for hearing before the end of December.

Respectfully submitted,

BAKER & DANIELS LLP

By/s/April E. Sellers

Jon Laramore, #17166-49

April E. Sellers, #21081-49

Anne Ricchiuto, #25760-49

BAKER & DANIELS LLP

300 North Meridian Street, Suite 2700

Indianapolis, IN 46204

Telephone: (317) 237-0300

Facsimile: (317) 237-1000

*Attorneys for Plaintiff, The Indiana Association of
Residential Child Care Agencies, Inc.*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Notice of Intent To Re-Open Litigation and Request For Hearing* was filed via the ECF system on November 30, 2011.

Betsy M. Isenberg
Indiana Attorney General
Indiana Government Center South- 5th Floor
302 W. Washington Street
Indianapolis, IN 46204-2770

Gavin M. Rose
Kenneth Falk
ACLU of Indiana
1031 E. Washington Street
Indianapolis, IN 46202

/s/April E. Sellers _____