

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 493—subrules 12.4(1) and 12.5(4)

“Claims for Indigent Defense Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 13B.4(8)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 815.7(6), 815.7(7), and 815.7(7A) as amended by 2023 Iowa Acts, Senate File 562, and section 815.7A as enacted by 2023 Iowa Acts, Senate File 562

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 17, 2023
11 a.m.

Fourth Floor Conference Room
Lucas State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Office of the State Public Defender (Office) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

The purpose of the proposed rulemaking is to remove portions of the former administrative rules that became obsolete, outdated, inconsistent, and incompatible with the new statutory enactments in 2023 Iowa Acts, Senate File 562. The legislation increased the hourly rate for payment of claims from the Indigent Defense Fund for attorney and guardian ad litem fees and allowed payment for associated travel time in situations where payment had not been allowed prior to the legislative change.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Payment for the increased hourly rates and travel time allowed will be paid initially from the indigent defense fund. The indigent defense fund is funded primarily by a state appropriation, but indigent clients who are appointed an attorney by the court may be ordered to reimburse the state for all or a portion of the fees to the extent the indigent person has the reasonable ability to pay.

- Classes of persons that will benefit from the proposed rulemaking:

Private attorneys and guardians ad litem who are appointed by the court to represent indigent persons will benefit directly from the increased payments allowed by these statutory changes. Also, all Iowans generally benefit from the state’s criminal and juvenile justice systems, which are designed to fairly

protect the rights of all Iowans. These increased payments are intended to enlarge the pool of attorneys who will accept court appointments to represent indigent clients. Representation of indigent persons who are charged with a crime or involved in our juvenile justice system is a key component of our constitutional and statutory guarantees to all Iowans. To the extent the increased payments are successful in increasing the number of attorneys willing to accept court appointments to represent indigent persons, all Iowans will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The estimated annual cost of the increase in the hourly rate of the fees for attorneys and guardians ad litem will be approximately \$2,600,000. The estimated annual cost of the increase in travel time allowed will be approximately \$1,500,000.

- Qualitative description of impact:

The principal economic impact of the rulemaking will likely be in rural areas, where younger attorneys are needed to replace retiring attorneys. The younger attorneys will likely enlarge their law practices beyond court appointments to other areas in the general practice of law. The increased payments for indigent defense representation should make it more economically feasible for young attorneys to locate in rural areas of Iowa, which will benefit these communities by generally increasing the availability of legal services in those parts of the state.

There will also likely be a qualitative impact on the quality of life for private attorneys who are willing to accept court appointments. With fewer attorneys willing to accept such appointments, the burden of covering them has fallen on fewer and fewer attorneys. The burden has taken a toll on the mental and physical health of some of those attorneys, and increasing the pool of attorneys will decrease the strain and stress on those attorneys still willing to accept such appointments. This is likely to result in a positive impact on the quality of life and well-being of those willing to shoulder this constitutional responsibility in our indigent defense system.

Another impact of the increased payments for travel time is that the increased payments will likely make our indigent defense justice system more efficient because the additional payments for travel time are conditioned on the attorney first requesting and being denied a remote hearing on uncontested matters. Since an in-person hearing is generally unnecessary on uncontested matters, the impact of the added efficiencies of increased remote hearings are expected to be substantial.

A final impact of the proposed rulemaking is the improvement to the Office's administrative rules generally by updating them to avoid inconsistencies with the new statutory provisions and added simplicity by the elimination of portions that are now obsolete and extraneous, all consistent with Executive Order 10. The Office's contract attorneys and the general public will benefit from the simplification and streamlining of these administrative rules.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

No additional enforcement costs are anticipated. The implementation costs are expected to be the amounts set forth above. The amount for the increased travel time allowed is expected to be paid initially from the Indigent Defense Fund, with reimbursement from the judicial branch to the extent that requests for remote hearings on uncontested proceedings are denied. The amount of the reimbursement is unknown because the number of requests for uncontested hearings that will be denied is unknown. However, the Office's estimate is that approximately \$250,000 of the \$1,500,000 increase projected for the new travel time allowance will be reimbursable to the Indigent Defense Fund from the judicial branch.

- Anticipated effect on state revenues:

No effect on state revenues is expected.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are no added costs for inaction because the additional cost of the newly enacted statutes results from the statutory enactments, which supersede the Office's administrative rules. The benefits derive from the avoidance of confusion resulting from the inconsistency of the Office's rules with the new statutory enactments.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Office has considered less costly alternatives, but the Office has found none that would honor and give full effect to the statutory intent of the new legislative enactments.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Office considered ways in which the office could avoid requiring a written application for a hearing in uncontested cases for payment of travel time.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Office could find no alternative that would give effect to the language in the new statute, which requires the judicial branch to reimburse the State Public Defender for travel time paid for uncontested hearings for which a request for a remote hearing had been denied.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Establish less stringent compliance or reporting requirements in the rule for small business:

As stated above, this Office could find no alternative to the requirement for attorneys and guardians ad litem in private practice to file a motion for the hearing in uncontested cases to be held remotely because the statutory language requires a motion for and denial of a request for a remote hearing in uncontested cases as a condition of payment for the travel time and reimbursement from the judicial branch to the Office for the payment of the travel time.

Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business: Any deadlines in the proposed rulemaking are established by the practical aspects of the need for the attorney or guardian ad litem to timely request a remote hearing in uncontested matters to secure payment for travel time, which is a requirement in the new statute itself, not one newly imposed by this proposed rulemaking.

Consolidate or simplify the rule's compliance or reporting requirements for small business: The Office's statement immediately above also answers this prompt.

Establish performance standards to replace design or operational standards in the rule for small business: These proposed amendments do not establish performance standards or replace design or operational standards.

Exempt small business from any or all requirements of the rule: The proposed amendments adopt the new statutory provisions, largely by incorporating them by reference. The Office is not capable of exempting anyone from the new statutory requirements, but it tries in all instances to accommodate all parties in meeting the requirements imposed by statute to the maximum extent allowed by law.

Text of Proposed Rulemaking

ITEM 1. Rescind subrule 12.4(1) and adopt the following **new** subrule in lieu thereof:

12.4(1) Unless the attorney has a contract that provides for a different manner or rate of payment, reasonable compensation for the payment of all claims for cases in which the attorney has been appointed shall be calculated on the basis of the hourly rate specified in Iowa Code section 815.7 applicable to the type of case and for the fiscal year during which the appointment was made for attorney or guardian ad litem time, and on the basis of the hourly rate of \$25 per hour for paralegal time to the extent paralegal time is payable under these rules.

ITEM 2. Amend subrule 12.5(4) as follows:

12.5(4) Travel time. Time spent by an attorney or guardian ad litem traveling is only payable at the full hourly rate provided in subrule 12.4(1) when the travel is reasonable and necessary to represent the indigent client and the attorney or guardian ad litem is traveling:

a. to j. No change.

Otherwise, travel time for an attorney or guardian ad litem is only payable at the rate and in the manner provided in Iowa Code section 815.7A as enacted by 2023 Iowa Acts, Senate File 562. For all uncontested hearings, the attorney or guardian ad litem must file an application for a remote hearing to be entitled to travel time. If the court denies the application, the attorney or guardian ad litem must submit a copy of the application and the denial order with the claim for payment of travel time. If the client wishes to have an uncontested hearing in person, and the attorney or guardian ad litem has no other reason to request an in-person hearing other than to be paid for travel time to attend the hearing in person in view of the client's request, the request for hearing shall be sent to the state public defender at claims@spd.state.ia.us. No application is required to be filed for contested hearings, but the travel time must be clearly identified as being for a contested hearing in the description of the travel on the claim. Travel time payable at any hourly rate counts toward the maximum daily hours allowed pursuant to subrule 12.5(1). No amount is payable for travel time at any hourly rate if the time is otherwise being paid at the full hourly rate provided in subrule 12.4(1).