

IC 24-12ARTICLE 12. CIVIL PROCEEDING ADVANCE PAYMENTS

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IC 24-12-1Chapter 1. Definitions

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- [24-12-1-1](#)Definitions

IC 24-12-1-0.5"Civil proceeding advance payment transaction"

(a) As used in this article and subject to [IC 24-12-6-2](#), "civil proceeding advance payment transaction", or "CPAP transaction", means a nonrecourse transaction in which a CPAP provider provides a funded amount to a consumer claimant to use for any purpose other than prosecuting the consumer claimant's civil proceeding, if the repayment of the funded amount is:

- (1) required only if the consumer claimant prevails in the civil proceeding; and
- (2) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

(b) The term includes a transaction:

- (1) that is termed or described as:
 - (A) a purchase; or
 - (B) an assignment of an interest in a consumer claimant's civil proceeding, or in the proceeds of a consumer claimant's civil proceeding; by the CPAP provider; or
- (2) with respect to which the CPAP provider sets forth in a CPAP contract, an agreement by:
 - (A) the CPAP provider to purchase from the consumer claimant; or
 - (B) the consumer claimant to assign to the CPAP provider; a contingent right to receive a share of the potential proceeds of the consumer claimant's civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

As added by P.L. 176-2019, SEC.36.

IC 24-12-1-1Definitions

Sec. 1. The following definitions apply throughout this article:

(1) "Advertise" means publishing or disseminating any written, electronic, or printed communication, or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a CPAP transaction.

(2) "Charges" means the amount of money to be paid to a CPAP provider by or on behalf of a consumer claimant above the funded amount provided by or on behalf of the CPAP provider to a consumer claimant. The term includes all administrative, origination, underwriting, and other fees no matter how denominated.

(3) "Civil proceeding", with respect to a CPAP transaction, means:

(A) a civil action;

(B) a mediation, an arbitration, or any other alternative dispute resolution proceeding; or

(C) an administrative proceeding before:

(i) an agency or instrumentality of the state; or

(ii) a political subdivision, or an agency or instrumentality of a political subdivision, of the state;

that is filed in, or is under the jurisdiction of, a court with jurisdiction in Indiana, a tribunal in Indiana, or an agency or instrumentality described in clause (C) in Indiana. The term includes all proceedings arising out of or relating to the proceeding, including any proceedings on appeal or remand, and any enforcement, ancillary, or parallel proceedings.

(4) "Civil proceeding advance payment contract", or "CPAP contract", means a contract for a CPAP transaction that a CPAP provider enters into, or offers to enter into, with a consumer claimant.

(5) "Civil proceeding advance payment provider", or "CPAP provider", means a person that enters into, or offers to enter into, a CPAP transaction with a consumer claimant in connection with a civil proceeding.

(6) "Civil proceeding advance payment transaction", or "CPAP transaction", has the meaning set forth in section 0.5 of this chapter.

(7) "Consumer claimant", with respect to a CPAP transaction, means an individual:

(A) who is or may become a plaintiff, a claimant, or a demandant in a civil proceeding; and

(B) who:

(i) is offered a CPAP transaction by a CPAP provider; or

(ii) enters into a CPAP transaction with a CPAP provider.

(8) "Department" refers to the department of financial institutions established by [IC 28-11-1-1](#).

(9) "Director" means the director of the department of financial institutions or the director's designee.

(10) "Funded amount", with respect to a CPAP transaction, means the amount of money:

(A) that is provided to the consumer claimant by the CPAP provider;

(B) the repayment of which is:

(i) required only if the consumer claimant prevails in the consumer claimant's civil proceeding; and
(ii) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution; and
(C) that under [IC 24-12-4-1\(1\)\(A\)](#) must be:
(i) set forth; and
(ii) designated by the term "funded amount";
by the CPAP provider in the CPAP contract.

(11) "Funding date" means the date on which the funded amount is transferred to the consumer claimant by the CPAP provider, by:
(A) personal delivery, wire, Automated Clearing House (ACH), or other electronic means; or
(B) insured, certified, or registered United States mail.

(12) "Nationwide Multistate Licensing System and Registry" (or "Nationwide Mortgage Licensing System and Registry" or "NMLSR") means a multistate licensing system owned and operated by the State Regulatory Registry, LLC, or by any successor or affiliated entity, for the licensing and registration of creditors, mortgage loan originators, and other persons in the mortgage or financial services industries. The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity.

(13) "Regularly engaged", with respect to a CPAP provider, refers to a CPAP provider that:
(A) entered into CPAP transactions with consumer claimants more than fifteen (15) times in the preceding calendar year; or
(B) enters into or will enter into CPAP transactions with consumer claimants more than fifteen (15) times in the current calendar year, if the CPAP provider did not meet the numerical standard described in clause (A) in the preceding calendar year.

(14) "Resolution date" means the date the funded amount, plus the agreed upon charges, is delivered to the CPAP provider.

(15) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.
As added by P.L. 153-2016, SEC.7. Amended by P.L. 85-2017, SEC.96; P.L. 176-2019, SEC.37.

IC 24-12-2Chapter 2. CPAP Contract Requirements

[24-12-2-1](#)CPAP contract requirements; attorney's written acknowledgment

IC 24-12-2-1CPAP contract requirements; attorney's written acknowledgment

Sec. 1. Every CPAP transaction must meet the following requirements:

(1) The CPAP contract must be completely filled in when presented to the consumer claimant for signature.

(2) The CPAP contract must contain, in bold font contained within a box, a right of rescission, allowing the consumer claimant to cancel the contract without penalty or further obligation if, not later than five (5) business days after the funding date, the consumer claimant either:

(A) returns to the CPAP provider the full amount of the disbursed funds by delivering the provider's uncashed check to the provider's office in person; or

(B) mails, by insured, certified, or registered United States mail, to the address specified in the contract, a notice of cancellation and includes in the mailing a return of the full amount of disbursed funds in the form of the provider's uncashed check or a registered or certified check or money order.

(3) The CPAP contract must contain the initials of the consumer claimant on each page.

(4) If the consumer claimant is represented by an attorney in the civil proceeding on which a CPAP transaction is based, the CPAP contract must contain a written acknowledgment by the attorney that attests to the following:

(A) That to the best of the attorney's knowledge, all costs and charges relating to the CPAP transaction have been disclosed to the consumer claimant.

(B) That the attorney is being paid by the consumer claimant on a contingency basis under a written fee agreement.

(C) That all proceeds of the civil proceeding will be disbursed through a trust account of the attorney, or through a settlement fund established to receive the proceeds of the civil proceeding on behalf of the consumer claimant.

(D) That the attorney is following the instructions of the consumer claimant with respect to the CPAP transaction.

(E) That the attorney has not received a referral fee or other consideration from the CPAP provider, and agrees not to receive a referral fee or other consideration from the CPAP provider at any time, in connection with the CPAP transaction.

If the attorney retained by the consumer claimant in the consumer claimant's civil proceeding does not complete the acknowledgment required by this subdivision, the CPAP contract, and the CPAP transaction to which it pertains, are void. However, the CPAP contract, and the CPAP transaction to which it pertains, remain valid and enforceable if the consumer claimant or the attorney terminates the representation.

As added by P.L. 153-2016, SEC.7. Amended by P.L. 176-2019, SEC.38.

IC 24-12-3Chapter 3. CPAP Provider Prohibitions

24-12-3-1CPAP provider prohibitions

IC 24-12-3-1CPAP provider prohibitions

Sec. 1. A CPAP provider may not do any of the following:

(1) Pay or offer to pay a commission, referral fee, or other form of consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees for referring a consumer claimant to the provider.

(2) Accept a commission, referral fee, rebate, or other form of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees.

(3) Intentionally advertise materially false or misleading information regarding the CPAP provider's products or services.

(4) Refer, in furtherance of an initial CPAP transaction, a consumer claimant or potential consumer claimant to a specific attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees. However, if a consumer claimant needs legal representation, the CPAP provider may refer the person to a local or state bar association referral service.

(5) Knowingly provide funding to a consumer claimant who has previously assigned or sold a part of the consumer claimant's right to proceeds from the consumer claimant's civil proceeding without first making payment to or purchasing a prior unsatisfied CPAP provider's entire funded amount and contracted charges, unless a lesser amount is otherwise agreed to in writing by the prior CPAP provider. However, multiple CPAP providers may agree to provide a CPAP transaction to a consumer claimant simultaneously if the consumer claimant and the consumer claimant's attorney consent to the arrangement in writing.

(6) Receive any right to make any decision with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding, or make any decision with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding. The right to make these decisions remains solely with the consumer claimant and the attorney in the civil proceeding.

(7) Knowingly pay or offer to pay for court costs, filing fees, or attorney's fees either during or after the resolution of the civil proceeding, using funds from the CPAP transaction.
As added by P.L. 153-2016, SEC.7. Amended by P.L. 85-2017, SEC.97.

IC 24-12-4Chapter 4. Disclosures

[24-12-4-1](#)Required CPAP contract disclosures

[24-12-4-2](#)Required CPAP notice

IC 24-12-4-1Required CPAP contract disclosures

Sec. 1. Each CPAP contract must contain the disclosures specified in this section, which are material terms of the contract. Unless otherwise specified, the disclosures must be in at least a 12 point bold font and be placed clearly and conspicuously within the contract.

The following disclosures are required:

- (1) On the front page, under appropriate headings, language specifying:
 - (A) the funded amount, designated by the term "funded amount", to be paid to the consumer claimant by the CPAP provider;
 - (B) an itemization of one (1) time charges;
 - (C) the total amount to be assigned by the consumer claimant to the CPAP provider, including the funded amount and all charges; and
 - (D) a payment schedule including the funded amount and all charges, listing all dates and the amount due at the end of each six (6) month period, from the funding date until the date on which the maximum amount due to the CPAP provider by the consumer claimant occurs.

- (2) A notice within the body of the contract stating the following: "Consumer Claimant's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days after the funding date if you either:
 - (A) return to (insert name of the CPAP provider) the full amount of the disbursed funds by delivering the provider's uncashed check to the provider's office in person; or
 - (B) mail, by insured, certified, or registered United States mail, to (insert name of the CPAP provider) at the address specified in the contract, a notice of cancellation and

include in the mailing a return of the full amount of disbursed funds in the form of the provider's uncashed check or a registered or certified check or money order."

(3) A notice informing the consumer claimant that the CPAP provider has no role in deciding whether, when, and how much the civil proceeding is settled for. However, the consumer claimant and consumer claimant's attorney must notify the CPAP provider of the outcome of the civil proceeding by settlement or adjudication before the resolution date. The CPAP provider may seek updated information about the status of the civil proceeding but in no event may the provider interfere with the independent professional judgment of the attorney in the handling of the civil proceeding or any settlement.

(4) Within the body of the contract, in all capital letters in at least a 12 point bold font contained within a box the following: "THE FUNDED AMOUNT AND AGREED UPON CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR CIVIL PROCEEDING, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR CIVIL PROCEEDING. YOU WILL NOT OWE (INSERT NAME OF THE CIVIL PROCEEDING ADVANCE PAYMENT PROVIDER) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR CIVIL PROCEEDING, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST (INSERT NAME OF THE CIVIL PROCEEDING ADVANCE PAYMENT PROVIDER).".

(5) Located immediately above the place on the contract where the consumer claimant's signature is required, in at least a 12 point bold font the following: "Do not sign this contract before you read it completely or if the contract contains any blank spaces. You are entitled to a completely filled in copy of the contract. Before you sign this contract, you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional. You acknowledge that your attorney in the civil proceeding has provided no tax, public or private benefit planning, or financial advice regarding this transaction."

As added by P.L. 153-2016, SEC.7. Amended by P.L. 176-2019, SEC.39.

IC 24-12-4-2Required CPAP notice

Sec. 2. (a) Except as provided in subsection (c), in a civil proceeding in which a consumer claimant is a party, the consumer claimant or the consumer claimant's attorney shall provide to:

(1) each of the other parties in the civil proceeding; and

(2) each insurer that has a duty to defend another party in the civil proceeding;

written notice that the consumer claimant has entered into a CPAP contract with a CPAP provider.

(b) A consumer claimant or the consumer claimant's attorney shall provide the written notice required by subsection (a) within a reasonable time after the date on which the consumer claimant and the CPAP provider enter into the CPAP contract, regardless of whether any other party in the civil proceeding is aware of the existence of or seeks information about the CPAP contract.

(c) Subsection (a) does not apply if the court in which the civil proceeding is filed issues an order excusing the consumer claimant from the duty to provide the written notice required by subsection (a).

(d) In a civil proceeding in which a consumer claimant is a party, the existence and contents of the CPAP contract are subject to discovery under the Indiana Rules of Trial Procedure by:

- (1) a party other than the consumer claimant; or
(2) an insurer that has a duty to defend another party in the civil proceeding.

(e) The written notice provided under subsection (a) is not admissible as evidence in a court proceeding.

As added by P.L.63-2023, SEC.1.

IC 24-12-4.5Chapter 4.5. Charges

[24-12-4.5-1Applicability](#)

[24-12-4.5-2Fee; servicing charge; document charges; limitations](#)

IC 24-12-4.5-1Applicability

Sec. 1. This chapter applies to a CPAP transaction offered or entered into after June 30, 2016.

As added by P.L.176-2019, SEC.40.

IC 24-12-4.5-2Fee; servicing charge; document charges; limitations

Sec. 2. (a) With respect to a CPAP transaction, a CPAP provider may impose the following:

(1) A fee that is:

(A) calculated at an annual rate that does not exceed thirty-six percent (36%) of the funded amount; and

(B) earned at consummation and each year after consummation on the anniversary of the funding date, in the case of a CPAP transaction offered or entered into after June 30, 2019.

(2) A servicing charge that is:

(A) calculated at an annual rate that does not exceed seven percent (7%) of the funded amount; and

(B) earned at consummation and each year after consummation on the anniversary of the funding date, in the case of a CPAP transaction offered or entered into after June 30, 2019.

(3) With respect to any one (1) civil proceeding, total charges that do not exceed five hundred dollars (\$500) for obtaining and preparing documents, in the case of a CPAP transaction offered or entered into after June 30, 2019.

(4) The following with respect to a CPAP transaction offered or entered into after June 30, 2016, and before July 1, 2019:

(A) If the funded amount of the CPAP transaction is less than five thousand dollars (\$5,000), a one (1) time charge that does not exceed two hundred fifty dollars (\$250) for obtaining and preparing documents.

(B) If the funded amount of the CPAP transaction is at least five thousand dollars (\$5,000), a one (1) time charge that does not exceed five hundred dollars (\$500) for obtaining and preparing documents.

(b) A CPAP provider may not assess, or collect from the consumer claimant, any fee or charge not otherwise permitted under this chapter in connection with a CPAP transaction. The fees and charges permitted under this chapter are not subject to refund or rebate.

As added by P.L. 176-2019, SEC.40.

IC 24-12-5Chapter 5. Violations

[24-12-5-1](#) Enforcement by department of financial institutions

[24-12-5-2](#) Court's determination of intentional violation; CPAP provider entitled to funded amount only

IC 24-12-5-1Enforcement by department of financial institutions

Sec. 1. (a) The department of financial institutions may enforce this article.

(b) With respect to CPAP transactions and CPAP providers, the department has all powers of administration, investigation, and enforcement set forth in:

(1) [IC 24-4.5-6](#); and

(2) [IC 28-11-4](#);

including the authority to levy a civil penalty.

As added by P.L. 153-2016, SEC.7. Amended by P.L. 176-2019, SEC.41.

IC 24-12-5-2Court's determination of intentional violation; CPAP provider entitled to funded amount only

Sec. 2. If a court with jurisdiction determines that a CPAP provider has intentionally violated the provisions of this article with regard to a specific CPAP transaction, the CPAP provider is entitled to recover only the funded amount provided to the consumer claimant in that CPAP transaction and is not entitled to any additional charges.

As added by P.L. 153-2016, SEC.7.

IC 24-12-6Chapter 6. Assignability

[24-12-6-1](#) Consumer claimant entitled to assign contingent right to receive proceeds of civil proceeding

[24-12-6-2](#) CPAP transaction not considered a loan

IC 24-12-6-1Consumer claimant entitled to assign contingent right to receive proceeds of civil proceeding

Sec. 1. A consumer claimant may assign the contingent right to receive an amount of the potential proceeds of a civil proceeding.

As added by P.L. 153-2016, SEC.7.

IC 24-12-6-2CPAP transaction not considered a loan

Sec. 2. This article may not be construed to cause any CPAP transaction that complies with this article to be considered a loan or to be otherwise subject to any other provisions of Indiana law governing loans.

As added by P.L. 153-2016, SEC.7.

IC 24-12-7Chapter 7. Attorney Prohibitions

[24-12-7-1](#) Attorney prohibitions

IC 24-12-7-1Attorney prohibitions

Sec. 1. An attorney or law firm retained by the consumer claimant in the civil proceeding may not have a financial interest in the CPAP provider offering a CPAP transaction to that consumer claimant. Additionally, any attorney who has referred the consumer claimant to the consumer claimant's retained attorney may not have a financial interest in the CPAP provider offering a CPAP transaction to that consumer claimant.
As added by P.L.153-2016, SEC.7.

IC 24-12-8Chapter 8. Privileged Communication

[24-12-8-1](#)Privileged communications

IC 24-12-8-1Privileged communications

Sec. 1. No communication between the consumer claimant's attorney in the civil proceeding and the CPAP provider with respect to the CPAP transaction limits, waives, or abrogates the scope or nature of any statutory or common law privilege, including the work product doctrine and the attorney client privilege.
As added by P.L.153-2016, SEC.7.

IC 24-12-9Chapter 9. Licensure

[24-12-9-1](#)Regularly engaging in CPAP transactions; license from department of financial institutions required

[24-12-9-2](#)Repealed

[24-12-9-3](#)CPAP transactions entered into before July 1, 2016; exemption

[24-12-9-4](#)Director's authority to use NMLSR in department's licensing system; reporting of information to NMLSR; confidentiality; director's authority to enter into agreements; waiver of privilege; processing fee; electronic records

[24-12-9-5](#)Applications for licenses; issuance; evidence of compliance; use of NMLSR; denial of application; right to hearing; fees; license not assignable or transferrable

[24-12-9-6](#)National criminal history background check; fingerprints; payment of fees or costs; use of NMLSR

[24-12-9-7](#)Credit reports; payment of fees or costs; demonstrated financial responsibility; considerations

[24-12-9-8](#)Surety bond; requirements; amount; termination; liability; notices

[24-12-9-9](#)License renewal; revocation or suspension of license not renewed; correcting amendments

[24-12-9-10](#)Suspension or revocation of license; order to show cause; order of revocation or suspension; relinquishment of license; preexisting contracts; emergency order for revocation

[24-12-9-11](#)Record keeping; use of unique identifier on forms and documents; submitting call reports to NMLSR; composite reports; notice to department of certain events or changes; notice of felony conviction

[24-12-9-12](#)Change in control of CPAP provider; application to department; timeframe for department's decision; conditions for approval; duty to report transfer of securities; director's discretion to require new license

IC 24-12-9-1Regularly engaging in CPAP transactions; license from department of financial institutions required

Sec. 1. After December 31, 2016, a person may not regularly engage (as determined in accordance with [IC 24-12-1-1\(13\)](#)) in the business of making CPAP transactions with consumer claimants unless the person obtains, and maintains on an annual basis, a CPAP license issued by the department under this chapter.

As added by P.L. 153-2016, SEC.7. Amended by P.L. 176-2019, SEC.42.

IC 24-12-9-2 Repealed

As added by P.L. 153-2016, SEC.7. Repealed by P.L. 176-2019, SEC.43.

IC 24-12-9-3 CPAP transactions entered into before July 1, 2016; exemption

Sec. 3. A CPAP transaction entered into before July 1, 2016, is not subject to this article.
As added by P.L. 153-2016, SEC.7. Amended by P.L. 176-2019, SEC.44.

IC 24-12-9-4 Director's authority to use NMLSR in department's licensing system; reporting of information to NMLSR; confidentiality; director's authority to enter into agreements; waiver of privilege; processing fee; electronic records

Sec. 4. (a) Subject to subsection (f), the director may designate the NMLSR to serve as the sole entity responsible for:

- (1) processing applications and renewals for licenses required under section 1 of this chapter;
- (2) issuing unique identifiers for licensees under this chapter; and
- (3) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this chapter.

(b) Subject to the confidentiality provisions contained in [IC 5-14-3](#), this section, and [IC 28-1-2-30](#), the director may regularly report to the NMLSR significant or recurring violations of this article.

(c) Subject to the confidentiality provisions contained in [IC 5-14-3](#), this section, and [IC 28-1-2-30](#), the director may report to the NMLSR complaints received regarding licensees under this chapter.

(d) The director may report to the NMLSR publicly adjudicated licensure actions against licensees under this chapter.

(e) The director shall establish a process in which persons licensed in accordance with this chapter may challenge information reported to the NMLSR by the department.

(f) The director's authority to designate the NMLSR under subsection (a) is subject to the following:

- (1) Information stored in the NMLSR is subject to the confidentiality provisions of [IC 5-14-3](#) and [IC 28-1-2-30](#). A person may not:
 - (A) obtain information from the NMLSR unless the person is authorized to do so by statute;
 - (B) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or
 - (C) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.
- (2) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under [IC 28-1-2-30](#) and that are:
 - (A) furnished by the director, the director's designee, or a licensee; or
 - (B) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under [IC 5-14-3](#), subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

- (3) Disclosure of documents, materials, and information:
 - (A) to the director; or
 - (B) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

- (4) Information provided to the NMLSR is subject to [IC 4-1-11](#).

- (5) This subsection does not limit or impair a person's right to:
 - (A) obtain information;
 - (B) use information as evidence in a civil action or proceeding; or
 - (C) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

- (6) The requirements under any federal law or [IC 5-14-3](#) regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or [IC 5-14-3](#).

- (7) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies as established by rule or order of the director.

- (8) Information or material that is subject to a privilege or confidentiality under subdivision (6) is not subject to:
 - (A) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
 - (B) subpoena, discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privileged information or material held by the NMLSR, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

- (9) Any provision of [IC 5-14-3](#) that concerns the disclosure of:
 - (A) confidential supervisory information; or
 - (B) any information or material described in subdivision (6);

and that is inconsistent with subdivision (6) is superseded by this section.

(10) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person licensed in accordance with this chapter and described in section 5(b) of this chapter and that is included in the NMLSR for access by the public.

(11) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:

- (A) require review of; and
- (B) make available;

the audited financial statements of the NMLSR.

(g) Notwithstanding any other provision of law, any:

- (1) application, renewal, or other form or document that:
 - (A) relates to licenses issued under this chapter; and
 - (B) is made or produced in an electronic format;
- (2) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of financial services entities and their employees; or
- (3) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.
As added by P.L. 176-2019, SEC.45.

IC 24-12-9-5 Applications for licenses; issuance; evidence of compliance; use of NMLSR; denial of application; right to hearing; fees; license not assignable or transferrable

Sec. 5. (a) The department shall receive and act on all applications for licenses to regularly engage as a CPAP provider in CPAP transactions. Applications must be as prescribed by the director of the department of financial institutions. If, at any time, the information or record contained in:

- (1) an application; or
- (2) a renewal application;

filed under this chapter is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.

(b) A license shall not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of:

- (1) the applicant and any significant affiliate of the applicant;
- (2) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (3) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(c) The director is entitled to request evidence of compliance with this section at:

- (1) the time of application;
- (2) the time of renewal of a license; or
- (3) any other time considered necessary by the director.

(d) Evidence of compliance with this section concerning a person licensed under this chapter may include:

- (1) criminal background checks as described in section 6 of this chapter, including a national criminal history background check (as defined in [IC 10-13-3-12](#)) by the Federal Bureau of Investigation, for any individual described in subsection (b);
- (2) credit histories as described in section 7 of this chapter;
- (3) surety bond requirements as described in section 8 of this chapter;
- (4) a review of licensure actions in Indiana and other states; and
- (5) other background checks considered necessary by the director.

(e) For purposes of this section and in order to reduce the points of contact that the director may have to maintain under this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

(f) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(g) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as provided in [IC 4-21.5](#).

(h) The applicant shall pay the following fees at the time designated by the department:

- (1) An initial license fee as established by the department under [IC 28-11-3-5](#).
- (2) Examination fees as established by the department under [IC 28-11-3-5](#).
- (3) An annual renewal fee as established by the department under [IC 28-11-3-5](#).

(i) A fee as established by the department under [IC 28-11-3-5](#) may be charged for each day a fee under subsection (h)(2) or (h)(3) is delinquent.

(j) Except in a transaction approved under section 12 of this chapter, a license issued under this section is not assignable or transferable.

As added by P.L. 176-2019, SEC.46.

IC 24-12-9-6 National criminal history background check; fingerprints; payment of fees or costs; use of NMLSR

Sec. 6. (a) When the director requests a national criminal history background check under section 5(d)(1) of this chapter for an individual described in section 5(b) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 5(c) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(b) For purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency.

As added by P.L.176-2019, SEC.47.

IC 24-12-9-7Credit reports; payment of fees or costs; demonstrated financial responsibility; considerations

Sec. 7. (a) If the director requests a credit report for an individual described in section 5(b) of this chapter, the individual to whom the request is made shall pay any fees or costs associated with procuring the report.

(b) The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR or the director to obtain an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

(c) The director may consider one (1) or more of the following when determining if an individual has demonstrated financial responsibility:

- (1) Bankruptcies filed within the last ten (10) years.
- (2) Current outstanding judgments, except judgments solely as a result of medical expenses.
- (3) Current outstanding tax liens or other government liens or filings.
- (4) Foreclosures within the past three (3) years.
- (5) A pattern of serious delinquent accounts within the past three (3) years.

As added by P.L.176-2019, SEC.48.

IC 24-12-9-8Surety bond; requirements; amount; termination; liability; notices

Sec. 8. (a) If required by the department, each CPAP provider licensed by the department under this article must be covered by a surety bond in accordance with this section in an amount not to exceed fifty thousand dollars (\$50,000).

(b) Any surety bond required under this section must:

- (1) provide coverage for the CPAP provider in the amount set forth in subsection (d);
- (2) be in a form prescribed by the director;
- (3) be in effect during the term of the CPAP provider's license under this article;
- (4) subject to subsection (c), remain in effect during the two (2) years after the license of the CPAP provider is surrendered or terminated;
- (5) be payable to the department for the benefit of:
 - (A) the state; and
 - (B) individuals who reside in Indiana when they agree to enter into CPAP transactions with the CPAP provider;
- (6) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and
- (7) have payment conditioned upon the CPAP provider's noncompliance with or violation of this chapter or other federal or state laws or regulations applicable to CPAP transactions.

(c) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this article. Upon written request from a CPAP provider, the director may, at the discretion of the director, waive or shorten the two (2)

year period set forth in subsection (b)(4) during which a surety bond required by this section must remain in effect after the CPAP provider's license under this article is surrendered or terminated.

(d) The penal sum of the surety bond shall be maintained in an amount determined by the director. If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the CPAP provider for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(e) If for any reason a surety terminates a bond issued under this section, the CPAP provider shall immediately notify the department and file a new surety bond in an amount determined by the director.

(f) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(g) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(h) Notices required under this section must be made in writing and submitted through the NMLSR or any other electronic registration system that may be approved by the director.
As added by P.L. 176-2019, SEC.49. Amended by P.L. 129-2020, SEC.9.

IC 24-12-9-9 License renewal; revocation or suspension of license not renewed; correcting amendments

Sec. 9. (a) A license issued under this article must be renewed not later than December 31 of each calendar year. The minimum standards for license renewal for a CPAP provider include the following:

- (1) Payment by the CPAP provider of all required fees for renewal of the license.
- (2) The filing by the CPAP provider of all reports and information required by the director.

(b) A license issued by the department under this article may be revoked or suspended by the department if the person fails to:

- (1) file any renewal form required by the department; or
- (2) pay any license renewal fee described under section 5(h)(3) of this chapter;

not later than sixty (60) days after the due date.

(c) A person whose license is revoked or suspended under this section may do either of the following:

- (1) Pay all delinquent fees and apply for reinstatement of the license.
- (2) Appeal the revocation or suspension to the department for an administrative review under [IC 4-21.5-3](#).

Pending the decision from a hearing under [IC 4-21.5-3](#) concerning license revocation or suspension, a license remains in force.

(d) If, at any time, the information or record contained in:

- (1) an original application for licensure filed under this chapter; or
- (2) a renewal application filed under this chapter;

is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.

As added by P.L.176-2019, SEC.50.

IC 24-12-9-10 Suspension or revocation of license; order to show cause; order of revocation or suspension; relinquishment of license; preexisting contracts; emergency order for revocation

Sec. 10. (a) The department may issue to a person licensed under this article an order to show cause why the license should not be revoked or suspended for a period determined by the department.

(b) An order issued under subsection (a) must:

(1) include:

- (A) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;
- (B) a description of the action contemplated by the department; and
- (C) a statement of the facts or conduct supporting the issuance of the order; and

(2) be accompanied by a notice stating that the licensee is entitled to:

- (A) a reasonable opportunity to be heard; and
- (B) show the licensee's compliance with all lawful requirements for retention of the license;

at the meeting described in subdivision (1)(A).

(c) After the meeting described in subsection (b)(1)(A), the department may revoke or suspend the license if the department finds that:

(1) the licensee has repeatedly and willfully violated:

- (A) this article or any applicable rule, order, or guidance document adopted or issued by the department; or
- (B) any other Indiana or federal laws, rules, or regulations applicable to CPAP transactions;

(2) the licensee does not meet the licensing qualifications set forth in this chapter;

(3) the licensee obtained the license for the benefit of, or on behalf of, a person who does not qualify for the license;

(4) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or

(5) facts or conditions exist that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.

(d) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of:

(1) the revocation or suspension;

(2) if a suspension has been ordered, the duration of the suspension;

(3) the procedure for appealing the revocation or suspension under [IC 4-21.5-3-6](#); and

(4) any other terms and conditions that apply to the revocation or suspension.

Not later than five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(e) Any person holding a license to enter into CPAP transactions may relinquish the license by notifying the department in writing of the relinquishment, but the relinquishment does not affect the person's liability for acts previously committed and coming within the scope of this article.

(f) If the director determines it is in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (e).

(g) If a person's license is revoked, suspended, or relinquished, the revocation, suspension, or relinquishment does not impair or affect any obligation owed by any person under any preexisting lawful contract.

(h) If the director has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, the director may proceed with the revocation of a license through an emergency or another temporary order under [IC 4-21.5-4](#).

As added by P.L.176-2019, SEC.51.

IC 24-12-9-11 Record keeping; use of unique identifier on forms and documents; submitting call reports to NMLSR; composite reports; notice to department of certain events or changes; notice of felony conviction

Sec. 11. (a) A CPAP provider required to be licensed under this article shall maintain records in conformity with United States generally accepted accounting principles and practices in a manner that will enable the department to determine whether the licensee is complying with the provisions of this article. The record keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever located. The records concerning any CPAP transaction shall be retained for two (2) years after making the final entry relating to the CPAP transaction. A person licensed or required to be licensed under this article is subject to [IC 28-1-2-30.5](#) with respect to any records maintained by the person.

(b) If the director designates under section 4 of this chapter the NMLSR as the sole entity responsible for performing any of the activities described in section 4(a) of this chapter, the unique identifier of any licensee must be clearly shown on all CPAP transaction documents furnished by the licensee to a consumer claimant and on any other documents as required by the director.

(c) If the director designates under section 4 of this chapter the NMLSR as the sole entity responsible for performing any of the activities described in section 4(a) of this chapter, a CPAP provider that is licensed by the department under this article and that engages in CPAP transactions shall submit to the NMLSR a call report, which must be in the form and contain information the NMLSR requires, if required by the director.

(d) A CPAP provider required to be licensed under this article shall file with the department a composite report as required by the department, but not more frequently than annually, in the form prescribed by the department relating to all CPAP transactions entered into by the licensee. The department shall consult with comparable officials in other states for the purpose of making the kinds of information required in the reports uniform among the states. Information contained in the reports shall be confidential and may be published only in composite form. The

department may impose a fee in an amount fixed by the department under [IC 28-11-3-5](#) for each day that a CPAP provider fails to file the report required by this subsection.

(e) A CPAP provider required to be licensed under this article shall file notification with the department if the CPAP provider:

- (1) has a change in name, address, or principals;
- (2) opens a new branch, closes an existing branch, or relocates an existing branch;
- (3) files for bankruptcy or reorganization; or
- (4) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(f) A licensee shall file notification with the department if the licensee or any director, executive officer, or manager of the licensee has been convicted of a felony under the laws of Indiana or any other jurisdiction. The licensee shall file the notification required by this subsection not later than thirty (30) days after the date of the event described in this subsection.

As added by P.L. 176-2019, SEC.52.

IC 24-12-9-12Change in control of CPAP provider; application to department; timeframe for department's decision; conditions for approval; duty to report transfer of securities; director's discretion to require new license

Sec. 12. (a) As used in this section, "control" means possession of the power directly or indirectly to:

- (1) direct or cause the direction of the management or policies of a CPAP provider, whether through the beneficial ownership of voting securities, by contract, or otherwise; or
- (2) vote at least twenty-five percent (25%) of the voting securities of a CPAP provider, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(b) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any CPAP provider unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(c) The period for approval under subsection (b) may be extended:

- (1) in the discretion of the director for an additional thirty (30) days; and
- (2) not more than two (2) additional times for not more than forty-five (45) days each time if:
 - (A) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (d);
 - (B) the director determines that any material information submitted is substantially inaccurate; or
 - (C) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of

any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(d) The department shall issue a notice approving the application only after the department is satisfied that both of the following apply:

- (1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the CPAP provider in a legal and proper manner.
- (2) The interests of the owners and creditors of the CPAP provider and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the CPAP provider will not change as a result of the transaction.

(f) The president or other chief executive officer of a CPAP provider shall report to the director any transfer or sale of securities of the CPAP provider that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the CPAP provider. The report required by this subsection must be made not later than ten (10) days after the transfer of the securities on the books of the CPAP provider.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a CPAP provider licensed under this article to apply for a new license under this chapter, instead of acquiring control of the licensee under this section.

As added by P.L. 176-2019, SEC.53.

IC 24-12-10Chapter 10. Rules

[24-12-10-1](#)Powers of department of financial institutions; rules and policies; prior approval of documents

IC 24-12-10-1Powers of department of financial institutions; rules and policies; prior approval of documents

Sec. 1. The department of financial institutions may adopt rules under [IC 4-22-2](#) or policies to implement this article. The department of financial institutions has all authority and powers necessary to regulate CPAP transactions, including the right to require the department's prior approval of:

- (1) CPAP contracts;
- (2) disclosures; and
- (3) other documents;

to be used by CPAP providers in entering into CPAP transactions, in order to ensure that consumer complainants are provided with a detailed explanation of the costs and obligations involved in a CPAP transaction before entering into a CPAP contract.

As added by P.L. 153-2016, SEC.7.