

**LCpd4 - Section-by-Section Analysis
Determination of Indigence by DPHHS**

| Section No. | Catchline | Current Law | Under LCpd1a | Comments |
|-------------|--|--|--|--|
| 1 | 47-1-111(1). Eligibility -- determination of indigence -- rules. | <p>(1)(b) requires OPD to file a motion to rescind when applicant is later determined to be ineligible for public defender services</p> <p>(1)(c) applicant may request the court to hold a head on a motion to rescind. If requested the court shall hold a hearing</p> <p>(1)(d) if the applicant does not request a hearing on the motion to rescind, order is rescinded; refers to "motion to rescind"</p> <p>(1)(e) a court may grant a motion to rescind</p> <p>(1)(f) propriety of a assignment of counsel is subject to inquiry by the court</p> | <p>(1)(b) requires DPHHS to determine eligibility. If DPHHS later determines the applicant may no longer be eligible, DPHHS will notify the court and the court will schedule a hearing on the rescission of counsel prior to rescinding the appointment of OPD</p> <p>(1)(c) applicant may waive the hearing on the rescission of appointment</p> <p>(1)(d) if applicant waives the hearing on rescission, order is rescinded; eliminates references to "motion to rescind"</p> <p>(1)(e) eliminates references to "motion to rescind", rather the court may order rescission</p> <p>(1)(f) struck because the propriety of the assignment of counsel is determined by DPHHS in the first place</p> | <p>DPHHS will make the initial determination. Thereafter, the court has the exclusive ability to modify a determination of eligibility. For due process a hearing must be held prior to a rescission in order for the applicant to defend his or her eligibility</p> <p>OPD will no longer file a motion to rescind, rather the court will order a hearing in the event it is notified by DPHHS that it believes the applicant is no longer eligible.</p> <p>Representative from DPHHS shall attend the hearing to answer questions about the determination.</p> |

| Section No. | Catchline | Current Law | Under LCpd1a | Comments |
|-------------|--|--|---|--|
| 1 | 47-1-111(2). Eligibility -- determination of indigence -- rules. | (2)(b) the application, financial statement and affidavit must be on a form prescribed by DPHHS (2)(d) OPD may not withhold provision of services for delay or failure to fill out an application | (2)(b) the application, financial statement and affidavit must be on a form prescribed by DPHHS (2)(d) OPD may not withhold provision of services for delay or failure to fill out an application <u>OR for a delay in eligibility determination</u> | Because DPHHS is now determining eligibility, it should be explicit that OPD will not delay services in the event there is a delay in an eligibility determination |
| 1 | 47-1-111(5). Eligibility -- determination of indigence -- rules. | (5) Allows the court or OPD to modify the determination of eligibility if additional information becomes available or if the applicant's financial circumstances change. | (5) Allows the court to modify the determination made by DPHHS | |

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|-------------|--|---|---|---|
| 1 | 47-1-111(6). Eligibility -- determination of indigence -- rules. | <p>(6) Requires the commission to establish procedures and adopt rules to determine eligibility. Commission procedures and rules:</p> <p>(a) must ensure that the eligibility determination process is fair and consistent statewide;</p> <p>(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;</p> <p>(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;</p> <p>(d) must avoid unnecessary duplication of processes; and</p> <p><i>(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may perform eligibility screening pursuant to this section.</i></p> | <p>(6) requires DPHHS to determine eligibility under subsection (3) and to implement procedures and rules adopted by it.</p> <p>The rules and procedures adopted by DPHHS must mirror (6)(a)-(d)</p> <p>eliminates (6)(e)</p> | <p>Where is the DPHHS employee who makes determinations be located? Should it be at a central office or in each region?</p> |
| 2/3 | Effective Date/Applicability Date | | <p>Amendments to become effective July 1, 2017. OPD will continue with eligibility determinations for any applications received by June 30, 2017.</p> | <p>July 1, 2017.</p> |