
SENATE BILL No. 218

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-8-7.3; IC 12-7-2; IC 12-12.7-2-17; IC 12-28-5; IC 21-38-6; IC 27-8-27.

Synopsis: Developmental disabilities. Changes the definition of "developmental disabilities" to conform to the federal definition. Repeals the community residential council and gives the duties of the council to the division of disability and rehabilitative services. Changes the requirement for third party payors for the first steps program. Eliminates priority criteria for formal categories for developmental disability waiver slots.

Effective: July 1, 2011.

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January 5, 2011, read first time and referred to Committee on Health and Provider Services.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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SENATE BILL No. 218



A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-10-8-7.3, AS AMENDED BY P.L.93-2006,
- 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2011]: Sec. 7.3. (a) As used in this section, "covered
- 4 individual" means an individual who is:
 - 5 (1) covered under a self-insurance program established under
 - 6 section 7(b) of this chapter to provide group health coverage; or
 - 7 (2) entitled to services under a contract with a prepaid health care
 - 8 delivery plan that is entered into or renewed under section 7(c) of
 - 9 this chapter.
- 10 (b) As used in this section, "early intervention services" means
- 11 services provided to a first steps child under IC 12-12.7-2 and 20
- 12 U.S.C. 1432(4).
- 13 (c) As used in this section, "first steps child" means an infant or
- 14 toddler from birth through two (2) years of age who is enrolled in the
- 15 Indiana first steps program and is a covered individual.
- 16 (d) As used in this section, "first steps program" refers to the
- 17 program established under IC 12-12.7-2 and 20 U.S.C. 1431 et seq. to



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meet the needs of:

- (1) children who are eligible for early intervention services; and
- (2) their families.

The term includes the coordination of all available federal, state, local, and private resources available to provide early intervention services within Indiana.

(e) As used in this section, "health benefits plan" means a:

- (1) self-insurance program established under section 7(b) of this chapter to provide group health coverage; or
- (2) contract with a prepaid health care delivery plan that is entered into or renewed under section 7(c) of this chapter.

(f) A health benefits plan that provides coverage for early intervention services shall reimburse the first steps program for payments made by the program for early intervention services that are covered under the health benefits plan. **a monthly fee established by the division of disability and rehabilitative services established by IC 12-9-1-1. The monthly fee shall be provided instead of claims processing of individual claims.**

(g) The reimbursement required under subsection (f) may not be applied to any annual or aggregate lifetime limit on the first steps child's coverage under the health benefits plan.

~~(h) The first steps program may pay required deductibles, copayments, or other out-of-pocket expenses for a first steps child directly to a provider. A health benefits plan shall apply any payments made by the first steps program to the health benefits plan's deductibles, copayments, or other out-of-pocket expenses according to the terms and conditions of the health benefits plan.~~

(h) The monthly fee required under subsection (f) may not be reduced or denied as a result of:

- (1) a required deductible;**
- (2) copayments;**
- (3) coinsurance; or**
- (4) other out-of-pocket expenses.**

SECTION 2. IC 12-7-2-44, AS AMENDED BY P.L.130-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 44. "Council" means the following:

- (1) For purposes of IC 12-9-4, the meaning set forth in IC 12-9-4-1.
- (2) For purposes of IC 12-12-8, the meaning set forth in IC 12-12-8-2.5.
- (3) For purposes of IC 12-13-4, the meaning set forth in IC 12-13-4-1.

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1 (4) For purposes of IC 12-15-41 and IC 12-15-42, the Medicaid
2 work incentives council established by IC 12-15-42-1.

3 (5) For purposes of IC 12-12.7-2, the meaning set forth in
4 IC 12-12.7-2-2.

5 (6) For purposes of IC 12-21-4, the meaning set forth in
6 IC 12-21-4-1.

7 ~~(7) For purposes of IC 12-28-5, the meaning set forth in~~
8 ~~IC 12-28-5-1.~~

9 SECTION 3. IC 12-7-2-61 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 61. "Developmental
11 disability" means the following:

12 (1) Except as provided in subdivision (2), before July 1, 1993, the
13 term means a **severe, chronic** disability of an individual that
14 **meets all of the following conditions:**

- 15 (A) (1) Is attributable to:
 - 16 (i) (A) mental retardation, cerebral palsy, epilepsy, or autism;
 - 17 **or**
 - 18 (ii) (B) any other condition (**other than a sole diagnosis of**
 - 19 **mental illness**) found to be closely related to mental
 - 20 retardation, because this condition results in similar
 - 21 impairment of general intellectual functioning or adaptive
 - 22 behavior or requires similar treatment **and or** services **similar**
 - 23 **to those required for mentally retarded persons. or**
 - 24 (iii) dyslexia resulting from a disability described in this
 - 25 subdivision;
 - 26 (B) originates before the person is eighteen (18) years of age;
 - 27 (C) has continued or is expected to continue indefinitely; and
 - 28 (D) constitutes a substantial disability to the individual's
 - 29 ability to function normally in society.

30 (2) For purposes of ~~IC 12-10-7~~ and ~~IC 12-28-1~~ before July 1,
31 1993, and for purposes of IC 12 after June 30, 1993, the term
32 means a severe, chronic disability of an individual that:

- 33 (A) is attributable to a mental or physical impairment, or a
- 34 combination of mental and physical impairments (other than
- 35 a sole diagnosis of mental illness);
- 36 (B) (2) Is manifested before the individual is twenty-two (22)
- 37 years of age.
- 38 (C) (3) Is likely to continue indefinitely.
- 39 (D) reflects the individual's need for a combination and
- 40 sequence of special, interdisciplinary, or generic care,
- 41 treatment, or other services that are of lifelong or extended
- 42 duration and are individually planned and coordinated; and

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- 1 ~~(E)~~ (4) Results in substantial **functional** limitations in at least
- 2 three (3) of the following **areas of major life activities**:
- 3 (i) (A) Self-care.
- 4 (ii) ~~(B) Receptive and expressive~~ **Understanding and use of**
- 5 language.
- 6 (iii) (C) Learning.
- 7 (iv) (D) Mobility.
- 8 (v) (E) Self-direction.
- 9 (vi) (F) Capacity for independent living.
- 10 (vii) (G) Economic self-sufficiency.

11 SECTION 4. IC 12-7-2-69, AS AMENDED BY P.L.1-2007,
 12 SECTION 108, IS AMENDED TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2011]: Sec. 69. (a) "Division", except as
 14 provided in subsections (b) and (c), refers to any of the following:

- 15 (1) The division of disability and rehabilitative services
- 16 established by IC 12-9-1-1.
- 17 (2) The division of aging established by IC 12-9.1-1-1.
- 18 (3) The division of family resources established by IC 12-13-1-1.
- 19 (4) The division of mental health and addiction established by
- 20 IC 12-21-1-1.

21 (b) The term refers to the following:

- 22 (1) For purposes of the following statutes, the division of
- 23 disability and rehabilitative services established by IC 12-9-1-1:
- 24 (A) IC 12-9.
- 25 (B) IC 12-11.
- 26 (C) IC 12-12.
- 27 (D) IC 12-12.5.
- 28 (E) IC 12-12.7.
- 29 **(F) IC 12-28-5.**
- 30 (2) For purposes of the following statutes, the division of aging
- 31 established by IC 12-9.1-1-1:
- 32 (A) IC 12-9.1.
- 33 (B) IC 12-10.
- 34 (3) For purposes of the following statutes, the division of family
- 35 resources established by IC 12-13-1-1:
- 36 (A) IC 12-13.
- 37 (B) IC 12-14.
- 38 (C) IC 12-15.
- 39 (D) IC 12-16.
- 40 (E) IC 12-17.2.
- 41 (F) IC 12-18.
- 42 (G) IC 12-19.

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- 1 (H) IC 12-20.
- 2 (4) For purposes of the following statutes, the division of mental
- 3 health and addiction established by IC 12-21-1-1:
- 4 (A) IC 12-21.
- 5 (B) IC 12-22.
- 6 (C) IC 12-23.
- 7 (D) IC 12-25.

8 (c) With respect to a particular state institution, the term refers to
 9 the division whose director has administrative control of and
 10 responsibility for the state institution.

11 (d) For purposes of IC 12-24, IC 12-26, and IC 12-27, the term
 12 refers to the division whose director has administrative control of and
 13 responsibility for the appropriate state institution.

14 SECTION 5. IC 12-12.7-2-17, AS ADDED BY P.L.93-2006,
 15 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2011]: Sec. 17. (a) A family shall participate in the cost of
 17 programs and services provided under this chapter to the extent
 18 allowed by federal law according to the following cost participation
 19 schedule:

Percentage of		Copayment	Maximum
Federal Income			
Poverty Level		Per	Monthly
Poverty Level			
At	But Not		
Least	More Than		
0%	250%	\$ 0	\$ 0
251%	350%	\$ 3	\$ 24
351%	450%	\$ 6	\$ 48
451%	550%	\$ 15	\$ 120
551%	650%	\$ 25	\$ 200
651%	750%	\$ 50	\$ 400
751%	850%	\$ 75	\$ 600
851%	1000%	\$ 100	\$ 800
1001%		\$ 120	\$ 960

34 (b) A cost participation plan used by the division for families to
 35 participate in the cost of the programs and services provided under this
 36 chapter:

- 37 (1) must:
- 38 (A) be based on income and ability to pay;
- 39 (B) provide for a review of a family's cost participation
- 40 amount:
- 41 (i) annually; and
- 42 (ii) within thirty (30) days after the family reports a

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- 1 reduction in income; and
- 2 (C) allow the division to waive a required copayment if other
- 3 medical expenses or personal care needs expenses for any
- 4 member of the family reduce the level of income the family
- 5 has available to pay copayments under this section;
- 6 (2) may allow a family to voluntarily contribute payments that
- 7 exceed the family's required cost participation amount;
- 8 (3) must require the family to allow the division access to all
- 9 health care coverage information that the family has concerning
- 10 the infant or toddler who is to receive services;
- 11 (4) must require families to consent to the division billing third
- 12 party payors for early intervention services provided; **and**
- 13 (5) may allow the division to waive the billing to third party
- 14 payors if the family is able to demonstrate financial or personal
- 15 hardship on the part of the family member. ~~and~~
- 16 ~~(6) must require the division to waive the family's monthly~~
- 17 ~~copayments in any month for those services for which it receives~~
- 18 ~~payment from the family's health insurance coverage.~~

19 (c) Funds received through a cost participation plan under this
 20 section must be used to fund programs described in section 18 of this
 21 chapter.

22 SECTION 6. IC 12-28-5-10, AS AMENDED BY P.L.99-2007,
 23 SECTION 147, IS AMENDED TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2011]: Sec. 10. ~~In conjunction with the The~~
 25 ~~division of disability and rehabilitative services; the council shall do~~
 26 the following:

- 27 (1) Determine the current and projected needs of each geographic
- 28 area of Indiana for residential services for individuals with a
- 29 developmental disability.
- 30 (2) Determine how the provision of developmental or vocational
- 31 services for residents in these geographic areas affects the
- 32 availability of developmental or vocational services to individuals
- 33 with a developmental disability living in their own homes.
- 34 (3) Develop standards for licensure of supervised group living
- 35 facilities regarding the following:
 - 36 (A) A sanitary and safe environment for residents and
 - 37 employees.
 - 38 (B) Classification of supervised group living facilities.
 - 39 (C) Any other matters that will ensure that the residents will
 - 40 receive a residential environment.
- 41 (4) Develop standards for the approval of entities providing
- 42 supported living services.

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1 ~~(5) Recommend social and habilitation programs to the Indiana~~
 2 ~~health facilities council for individuals with a developmental~~
 3 ~~disability who reside in health facilities licensed under IC 16-28.~~
 4 ~~(6) Develop and update semiannually a report that identifies the~~
 5 ~~numbers of individuals with a developmental disability who live~~
 6 ~~in health facilities licensed under IC 16-28. The Indiana health~~
 7 ~~facilities council shall assist in developing and updating this~~
 8 ~~report.~~

9 SECTION 7. IC 12-28-5-11 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) A supervised
 11 group living facility must have a license or provisional license issued
 12 under this chapter to operate.

13 (b) An entity that provides supported living services must be
 14 approved by the **council division** under this chapter to operate.

15 SECTION 8. IC 12-28-5-12, AS AMENDED BY P.L.99-2007,
 16 SECTION 148, IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) The **council division** may
 18 license only those supervised group living facilities that:

- 19 (1) meet the standards established under section 10 of this
- 20 chapter; and
- 21 (2) are necessary to provide adequate services to individuals with
- 22 a developmental disability in that geographic area.

23 ~~(b) A supervised group living facility described in subsection (c)~~
 24 ~~may locate in only one (1) of the following counties:~~

- 25 ~~(1) A county having a population of more than twenty-seven~~
- 26 ~~thousand (27,000) but less than twenty-seven thousand two~~
- 27 ~~hundred (27,200);~~
- 28 ~~(2) A county having a population of more than one hundred~~
- 29 ~~seventy thousand (170,000) but less than one hundred eighty~~
- 30 ~~thousand (180,000);~~
- 31 ~~(3) A county having a population of more than fifty thousand~~
- 32 ~~(50,000) but less than fifty-five thousand (55,000);~~

33 ~~(e)(b) Notwithstanding 431 IAC 1.1-3-7(c) and 431 IAC 1.1-3-7(d),~~
 34 ~~the **council division** shall license one (1) supervised group living~~
 35 ~~facility that is located less than one thousand (1,000) feet from another~~
 36 ~~supervised group living facility or a sheltered workshop under the~~
 37 ~~following conditions:~~

- 38 (1) Both of the supervised group living facilities meet all
- 39 standards for licensure as provided in section 10(3) of this
- 40 chapter.
- 41 (2) Both of the supervised group living facilities are built on land
- 42 that is owned by one (1) private entity.

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1 (3) The ~~community formed by the~~ supervised group living
2 facilities provides job opportunities for residents of the supervised
3 group living facilities, **as appropriate.**

4 ~~(d)~~ **(c)** The ~~council~~ **division** may approve an entity to provide
5 supported living services only if the entity meets the standards
6 established under section 10 of this chapter.

7 SECTION 9. IC 12-28-5-13 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13. The ~~council~~
9 **division** may revoke:

- 10 (1) the license of a supervised group living facility; or
- 11 (2) the approval of an entity that provides supported living
12 services;

13 that no longer meets the standards established under section 10 of this
14 chapter after following the procedures prescribed by IC 4-21.5-3. If a
15 hearing is provided for or authorized to be held by the ~~council~~;
16 **division**, the ~~council~~ **division** may designate a person as its agent or
17 representative to conduct a hearing. The agent or representative shall
18 conduct the hearing under IC 4-21.5-3.

19 SECTION 10. IC 12-28-5-14 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14. (a) The ~~council~~
21 **division** may issue a provisional license to a facility that does not
22 qualify for a license under section 12 of this chapter but that provides
23 satisfactory evidence that the facility will qualify within a period
24 prescribed by the ~~council~~ **division**. The period may not exceed six (6)
25 months.

26 (b) The ~~council~~ **division** may issue provisional approval to an entity
27 providing supported living services that does not qualify for approval
28 under section 12 of this chapter but that provides satisfactory evidence
29 that the entity will qualify within a period prescribed by the ~~council~~;
30 **division**. The period may not exceed six (6) months.

31 SECTION 11. IC 12-28-5-19 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 19. **(a)** The ~~council~~
33 **division** may adopt rules under IC 4-22-2 to implement this chapter.

34 **(b) After June 30, 2011, rules of the former community
35 residential council (repealed) are considered rules of the division.**

36 SECTION 12. IC 21-38-6-1, AS ADDED BY P.L.2-2007,
37 SECTION 279, IS AMENDED TO READ AS FOLLOWS
38 [EFFECTIVE JULY 1, 2011]: Sec. 1. An employee health plan that
39 provides coverage for early intervention services shall reimburse the
40 first steps program for ~~payments made by the program for early
41 intervention services that are covered under the employee health plan.~~
42 **a monthly fee established by the division of disability and**

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1 **rehabilitative services. The monthly fee shall be provided instead**
2 **of claims processing of individual claims.**

3 SECTION 13. IC 21-38-6-3, AS ADDED BY P.L.2-2007,
4 SECTION 279, IS AMENDED TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2011]: Sec. 3. ~~The first steps program may pay~~
6 ~~required deductibles, copayments, or other out-of-pocket expenses for~~
7 ~~a first steps child directly to a provider. An employee health plan shall~~
8 ~~apply any payments made by the first steps program to the employee~~
9 ~~health plan's deductibles, copayments, or other out-of-pocket expenses~~
10 ~~according to the terms and conditions of the employee health plan. The~~
11 ~~reimbursement required under IC 28-31-6-1 may not be reduced~~
12 ~~or denied as a result of:~~

- 13 (1) a required deductible;
- 14 (2) copayments;
- 15 (3) coinsurance; or
- 16 (4) other out-of-pocket expenses.

17 SECTION 14. IC 27-8-27-6 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. A health insurance
19 plan that provides coverage for early intervention services shall
20 reimburse the first steps program for payments made by the program
21 for early intervention services that are covered under the health
22 insurance plan. **a monthly fee established by the division of**
23 **disability and rehabilitative services. The monthly fee shall be**
24 **provided instead of claims processing of individual claims.**

25 SECTION 15. IC 27-8-27-9 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. ~~The first steps~~
27 ~~program may pay required deductibles, copayments, or other~~
28 ~~out-of-pocket expenses for a first steps child directly to a provider. An~~
29 ~~insurer (as defined in IC 27-8-14.5-3) shall apply any payments made~~
30 ~~by the first steps program to the health insurance plan's deductibles,~~
31 ~~copayments, or other out-of-pocket expenses according to the terms~~
32 ~~and conditions of the health insurance plan. Reimbursement required~~
33 ~~under section 6 of this chapter may not be reduced or denied as a~~
34 ~~result of:~~

- 35 (1) a required deductible;
- 36 (2) copayments;
- 37 (3) coinsurance; or
- 38 (4) other out-of-pocket expenses.

39 SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE
40 JULY 1, 2011]: IC 12-28-5-1; IC 12-28-5-2; IC 12-28-5-3;
41 IC 12-28-5-4; IC 12-28-5-5; IC 12-28-5-6; IC 12-28-5-7; IC 12-28-5-8;
42 IC 12-28-5-9; IC 12-28-5-15.

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1 SECTION 17. P.L.73-2008, SECTION 1 IS AMENDED TO READ
2 AS FOLLOWS [EFFECTIVE JULY 1, 2011]: SECTION 1. (a) As used
3 in this SECTION, "division" refers to the division of disability and
4 rehabilitative services established by IC 12-9-1-1.

5 (b) As used in this SECTION, "office" refers to the office of
6 Medicaid policy and planning established by IC 12-8-6-1.

7 (c) As used in this SECTION, "waiver" refers to any waiver
8 administered by the office and the division under section 1915(c) of the
9 federal Social Security Act.

10 (d) Before July 1, 2008, the office shall apply to the United States
11 Department of Health and Human Services for approval to amend a
12 waiver to set priorities as described in subsection (e) in providing
13 services under the waiver.

14 (e) The waiver amendment must provide for the following
15 individuals to be given priority in receiving services under the waiver:

16 (1) An individual who is determined by the state department of health
17 to no longer need or receive active treatment provided in a supervised
18 group living setting.

19 (2) An individual who is receiving service under the direction of the
20 division in a supervised group living setting; nursing facility; or large
21 private intermediate care facility and has a history of unexplained
22 injuries or documented abuse that is substantiated by the division and
23 that threatens the health and welfare of the individual.

24 (3) A current resident; or the guardian of a resident who is
25 incapacitated; of a large; private intermediate care facility for the
26 mentally retarded who requests to leave the facility.

27 (4) An individual who will be attaining the maximum age for a
28 residential or group home setting funded by the department of
29 education; the division of family resources; or the office.

30 (5) An individual for whom the primary caregiver of the individual is
31 no longer able to care for the individual due to:

32 (A) the death of the primary caregiver;

33 (B) the long term institutionalization of the primary caregiver;

34 (C) the long term incapacitation of the primary caregiver; or

35 (D) the long term incarceration of the primary caregiver.

36 (6) An individual who is on the waiver waiting list and has
37 been determined to have a shortened life span as defined by
38 the division.

39 (7) Any other priority as determined by the division.

40 (f) The office may not implement the amendment to the waiver until
41 the office files an affidavit with the governor attesting that the
42 amendment to the federal waiver applied for under this SECTION is in

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1 effect. The office shall file the affidavit under this subsection not later
2 than five (5) days after the office is notified that the waiver amendment
3 is approved.

4 (g) If the office receives approval for the amendment to the waiver
5 under this SECTION from the United States Department of Health and
6 Human Services and the governor receives the affidavit filed under
7 subsection (f), the office shall implement the amendment to the waiver
8 not more than sixty (60) days after the governor receives the affidavit.

9 (d) Before October 1, 2011, the office shall apply to the United
10 States Department of Health and Human Services for approval to
11 amend a waiver to set an emergency placement priority for
12 individuals in the following situations:

13 (1) Death of a primary caregiver where alternative placement
14 in a supervised group living setting:

- 15 (A) is not available; or
- 16 (B) is determined by the division to be an inappropriate
17 option.

18 (2) A situation in which:

- 19 (A) the primary caregiver is at least eighty (80) years of
20 age and is no longer able to care for the individual; and
- 21 (B) alternate placement in a supervised group living setting
22 is not available or is determined by the division to be an
23 inappropriate option.

24 (3) There is evidence of abuse or neglect in the current
25 institutional or home placement, and alternate placement in
26 a supervised group living setting is not available or is
27 determined by the division to be an inappropriate option.

28 (4) There are other health and safety risks, as determined by
29 the division director, and alternate placement in a supervised
30 group living setting is not available or is determined by the
31 division to be an inappropriate option.

32 (h) (e) The office may adopt rules under IC 4-22-2 necessary to
33 implement this SECTION.

34 (i) (f) This SECTION expires July 1, 2016.

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